

MINORITY RIGHTS

According to the Law of the Tribute Agreement

A Survey of Some Purports
of The International Rights From the
Viewpoint of the

Islamic Jurisprudence

Abbasali Amid Zanjani

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MINORITY RIGHTS

Islamic Jurisprudence

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Minority Rights

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*In the Name of Allah,
the Beneficent, the Merciful*

Introduction to the Third Edition

The question of religious minorities in
the plan for the big house of Islam

Since the rise of Islam and organisation of the Muslims and the appearance of the Islamic societies, groups of the followers of various religions lived alongside the Muslims in Islamic lands without adopting Islam. They preferred to live with the Muslims rather than to emigrate or be converted.

But with the rapid spread of Islam among various nations of the world, and the extraordinary growth of the Islamic *ummah* and expansion of the Islamic lands, the religious mi-

norities did not grow so much or augment in number, inspite of the freedom and tolerable life they enjoyed. A number of them gradually turned to Islam, and many of them lost their solidarity, initiative and interest in their religious expansion and activity.

In the history of Islam we rarely meet a case in which religious minorities have engaged in organised uprisings, combats and clashes to secure their rights and freedoms.

Those rare cases were related to particular political events and relations, but not connected to the Islamic questions.

The historical position of the religious minorities in the Islamic societies and the Islamic lands was questioned with an unbelievable astonishment with the invasion of the western culture of Islam. But since the true reason for it was the attraction of Islam and its logical Methods of conversion as well as the negation of compulsion or imposition of religion, and at the same time a spirit of co-existence, peacefulness, and granting greater rights and freedoms, all of which were unfamiliar or inadmissible for the western world, they made a wrong interpretation of this magnificent historical event.

This mistaken interpretation which accused Islam and the Muslims of roughness and forceful imposition of religion, roused the Islamic scholars to deal with the question from two aspects in order to defend Islam.

They tried first refute this unjust accusation against the Muslims by describing the rights and liberties granted by Islam to the religious minorities and defining the theoretical and jurisprudential dimensions of the questions, and surveying the history of the Muslims' political, social and economic

relations with the religious minorities even in the conditions and cases where the Muslims did not act so much according to jurisprudential theories.¹

Although this reaction was natural by the Islamic scholars, yet it is regretted that we should perform our duties in the form of a reaction, and instead of taking precautions we should wait until we are criticised and accused, and then when we begin. Why should we confine ourselves to refuting a charge instead of analysing the matter fundamentally?

Finally, what policy is to be adopted by a religion which claims to have a universal mission and by an *ummah* which considers itself commissioned to carry out a role in the world, and by these two ultimate heirs of the earth and human generation, in attaining this ultimate goal in the question of relationships with the followers of other creeds? What position will the religious minorities have in the lands of Islam, and what rights and liberties will they enjoy?

The question of the relationships of the Islamic lands with non-Muslim nations and groups is one of the most important political problems of Islam in its civil and international dimensions to be investigated carefully with reference to the Islamic texts and jurisprudence.

If in the past such legal and political topics have had a mere comparative value in presenting the theories of the school of thought to prove the comprehensiveness of Islam. Today, especially after the glorious victory of the Islamic Revolution, its vital and objective necessity is evident to eve-

¹ The two works: "*The Guards of Peace and Co-existence*" and "*The Rights of the Minorities*" have been written for this purpose.

ryone.

In the Islamic republican order where, according to the constitutional law of the country, all the laws and regulations should be based on the Islamic laws and principles, and the position of the leadership of the Revolution should be derived from religious guardianship and jurisprudence. No excuse is acceptable in neglecting investigation in the legal, political and economic matters of Islam.

This book of "Rights of Minorities" which has been out of stock for many years, is now offered to the readers in its third edition, and it may be considered as the first humble step in performing that great task. As the book was written twenty years ago under the conditions of the taghut regime, many of its terms and expressions cannot be clear enough in presenting the Islamic realities. But the book is based on jurisprudential principles and the views of the great Islamic jurists, for the compilation of which the author has spent several years of research and hard work, hoping that it will be accepted and rewarded (by Allah).

While apologizing for all the defects that this book may have, I invite all the Islamic thinkers and scholars in whose hearts the eternal flame of Islam is kindled and think about the future of Islam and Islamic Revolution, to look at this book, not with the eye of indulgence, but with a critical attitude as their duty necessitates, and with better and more explanations make more perfect this humble step by a deeper investigation and discussion of its legal, political and economic matters which the needs of the time require.

The views of the Imam Khomeini, expressed in *Al-Wassila*

about the rights of the minorities have been added to the topics of the book in order to give the analysis a complete form as a basis for further researches by the researchers.

'Abbas-Ali 'Amid Zanjāni

October 1983

*In the name of Allah,
the Beneficent, the Merciful*

I have found no fitter and no more
Suitable opening for this book than
the following brilliant and meaningful utterances
selected from the eternal charter
of Imam Ali, peace be upon him.

The Author

“...**D**o not reject any kind of peace and
pact of co-existence to which your
enemy invites you and in which there
is Allah's satisfaction; it is in peacetime that your army and
military forces will get a greater readiness and strength, and
you will be freed from your anxieties and griefs, and your
country, too, will live in safety.

But take constant care, and be cautious of the enemy after
making peace with him; for the enemy may often approach
you to benefit from your negligence and take you by surprise.

Therefore, never abandon caution, but take care and be ever suspicious of your optimism.”

If you conclude an agreement with your enemy or undertake an obligation, be faithful to your pact and carry out your commitments in full honesty, and make your life a guarantee for the protection of your obligations, for there is nothing greater and higher than loyalty to a promise and agreement among binding matters of Allah about which there exists unanimity, zeal and interest inspite of all the differences in people's desires and views...

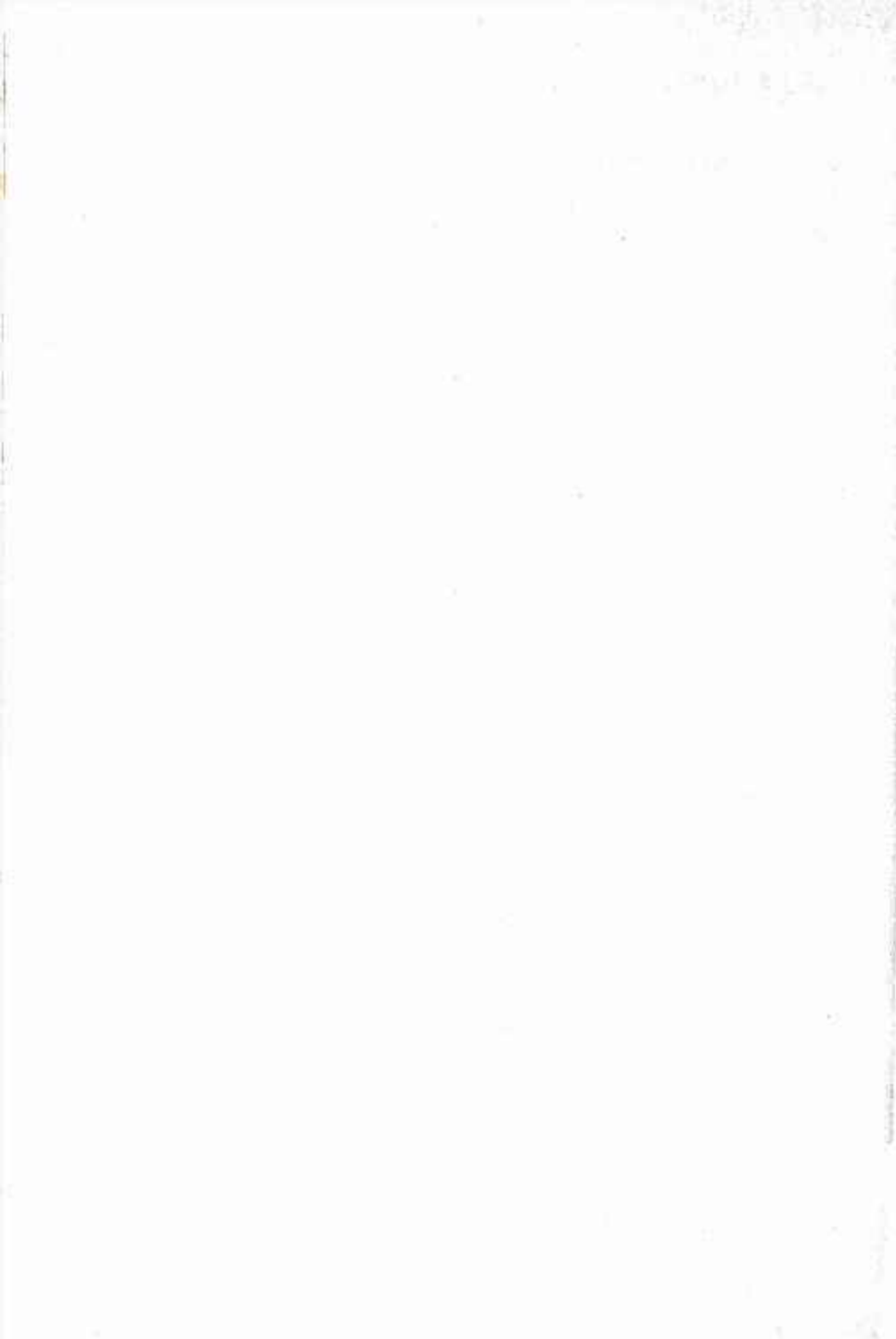
Do not seek excuses in your agreement, and do not allow any treason, plottor cunning to enter your promise and pact. Do not mislead your enemy by deceit and slyness. Undoubtedly only ignorant and miserable people show disobedience to Allah...

Allah has made promise and agreement the means of security and has granted it to the people because of his Favour and Mercy. He has made it a sanctuary in the shelter of which they may live in ease and tranquility, and with the aid of which they may gain many benefits.

Therefore, no fraud, deceit, temptation, doubt or treason is permissible. Never conclude a pact in which there is misinterpretation and aberration, and after concluding it firmly and giving your assurance, do not resort to multi-sided arguments.

The difficulty of the task in observing Allah's pact should not lead you to demand its abrogation unjustly; for, you fortitude in bearing the difficulties and hardships which you hope to have a good end, is better than the slyness and cunning the

punishment of which frightens you, and makes you afraid of being called to accounts by Allah, and fail to secure the possibility of being pardoned in this world and in the next. The Imam Ali (A.S.)



Chapter One

The Defenceless Aliens

*A Survey of the Positive
International Laws*



Chapter One

The Defenceless Aliens

A Survey of the Positive International Laws

The Minorities Defenceless Aliens

The need for an exchange of mental and material products of various groups of mankind from the viewpoint of blood, language, religion, and the spirit of association and acquaintance among nations; and their liberal feeling, and the right in the choice of dwelling and residence, have necessitated, since the remotest period of man's social life, the inevitable mingling of various racial and religious groups in most of the inhabited lands and countries which have been formed.

Owing to this same forcible mingling of the nations, few countries can be found whose citizens have the same religion and race, or whose members possess the same national characteristics desired by a person or persons or by the dominant

majority.

It goes without saying that in every country, a ruler or a government follows a special racial or religious or national and citizenship policy, and makes the enjoyment of legal and governmental protection conditional upon the conformity of the individuals with the citizenship system of that country. This point is ever truer in the case of past nations and conditions of former centuries where the system of racial and religious policy was carried out more violently and fanatically by their governments.

In most cases the execution of the policy resulted in the privation of the groups which did not fall under that system, and many difficulties and restrictions were often placed upon them. They were treated unkindly or even cruelly by the ruling class and by the majority, and were in some cases tortured most savagely. Consequently the question of minorities and the protection of their legitimate rights have, for long in the political history of the world, taken the form of an international problem to be considered and investigated.

Meaning of 'Alien'

In the past a group of minorities were looked at as aliens, except that this term assumed a different meaning according to the difference in the political system of each country.

In the realms where a racial system governed, an alien was a person whose blood, language or other characteristics did not conform with those of the ruler or of the dominant majority.

Similarly in countries where a religious policy was followed and nationality was based on religion, an alien was

considered a person who did not follow the religion of the ruler or the dominant majority of the nation.

At the present time, too, when the citizenship of every country is based on particular national elements, those persons who lack such elements and peculiarities are considered aliens and a group foreign to, and apart from, the nation.

The nature of being an alien has undergone no change in the so-called progressive modern times as compared with the so-called decadent past. The only noticeable difference is that in the past it was the ruler or the ruling group that decided who was an alien, but now he follows the law coined again by the majority. In both cases the minority is counted as an alien and a foreign group and an ill-matched patch upon the garment of the nation, and a group apart from the human elements which form a country. There exists no national unity between the two groups of alien minority and national majority, and the national unity is not possible except through a change of citizenship.

But in the system of the Islamic laws, although citizenship is based on religion, the word "alien" has no practical application and an individual or the religious groups can join the group of the Islamic *Ummah* by concluding a pact or agreement of dhimmah. In this way a single *Ummah* and nation is formed by the union of different groups possessing different citizenships. This point will be explained in the following chapters.

Aliens in the Racial and Religious Governments

Before dealing with the rights of the minorities in the Is-

Islamic legal system, it would be necessary to consider briefly the position of the aliens in past governments as well as in the modern legal systems. For this purpose we make a survey of their position in the following periods:

1. The period of the rule of racial and political systems (before the establishment of the United Nations Organisation).
2. The period of the rule of the law (after the establishment of the UNO).

In the countries under racial or religious governments, aliens usually had, an unfortunate position except in rare cases, and they were not only deprived of the sources and rights of the official race and religion of the country, but they were also treated badly by both the government and the people, and owing to this treatment there often occurred incidents which led to group tortures, massacres and tragic scenes.

Jewish governments, which before Christ were the most powerful and the oldest government of the time, owing to the special bond between race and religion in the Jewish faith which had given it an acute form, usually followed a harsh racial and religious policy and treated non-Jewish groups as animals to be used by the select Jewish race.

The Jewish government, which was chosen by the Jewish nation, and, for this reason could not adopt the theory of a government formed of various racial and religious groups, or the formation of a world government for its goal, had but to adopt one of the two following plans in relation to its policy towards the extensive non-Jewish masses:

1. To destroy non-Jews and purge the land from the un-

clean elements (non-Jews).

2. To enslave and exploit such groups in the interest of the select Jewish people.

The second policy was naturally followed whenever religious fanaticism was not at its height. But when the conditions resembled those of the time of the rise of Christ and the spread of Christian influence on the Jewish governments of that time, only the policy of the annihilation of the non-Jews was followed.

The story of Jesus' life and the tragic events of the short period of that great Prophet's mission, as well as the torments and tortures suffered by his apostles at the hands of the Jewish government of the time and the wanderings and homelessness of the Christians in that period, are a clear example of the cruel conduct of the Jewish governments.¹ The genocide of the Christians by the Jewish government of Yemen is an example of the disgraceful bigotry of the Jewish governments and their unhuman treatment of the non-Jews.

In this fearful massacre tens of thousands of the Christians were tragically killed and burnt in fire. Zu-Navas, a Jewish king of yemen, in a single occasion killed twenty thousand Christians of Najran and burnt their bodies in fire.²

In the early years of the fourth century A.D., when Christianity was accepted as the official religion of the Roman Empires, and Christian governments and rulers held the rein of affairs, the era of the freedom of the Christians and enslavement of the Jews began.

¹ "At-Ta'ayush ad-Dini lil-Islam", (Religious Co-existence in Islam) pp. 20-22.

² Ibid.

The Jews were massacred several times during the Christian governments of the Roman Empire or banished in groups from the Roman realms. On one occasion Cyrus, king of Iran, granted asylum to tens of thousands of exiled and homeless Jews. In the 16th century A.D. the Muslim Ottoman government received thousands of Jews who had been cruelly driven out of Spain and Portugal and allowed them to settle in the Islamic lands.

In many Christian countries, the Jews were deprived of all civil rights and were not even allowed to keep slaves which was free and common in those times.

In this connection the Encyclopedia Britannica, writes: "The whole of western Europe was closed to the Jews in the 16th century, and only in a part of northern Italy and a small part of France and Germany were they allowed some freedom."

In 1648 a law was passed in the British parliament condemning to death anyone who expressed an opinion contrary to the principle of trinity, and in 1688 the same parliament declared Protestantism as the official religion of the country, and stipulated that no Catholic had the right to perform his religious rites in the British realm.

In France, until the end of the 17th century in accordance with special regulations enacted by Catholic governments, protestants were placed under severe restrictions. They were not even free to bury their dead except at special times, and no more than thirty people were allowed to escort the funeral, and no more than twelve people could attend a wedding or a baptism.

In Christian governments the subject of the aliens had

mostly a religious aspect, and the aliens suffered all kinds of privations and restrictions and even tortures and oppressions, without having any refuge.

The dreadful scenes and happenings which took place in this connection in various Christian countries until the 17th century, resulted in paying attention to the question of religious freedom in most of the treaties of the 17th, 18th and 19th centuries, such as the famous treaties of Westphalia and Vienna. In the Paris Treaty of 1856 it was stipulated that discrimination should be abolished in both its racial and religious aspects. In the Berlin treaty of 1878 the big powers of the time compelled fanatical governments to recognise freedom of religion, but there remained an ambiguity concerning matters of race, language and nationality.¹

It is noteworthy that the subject of minority rights was considered in connection with the racial and religious minorities who were citizens of their residential realms, and as explicitly mentioned in the Paris Treaty of 1856 it was declared that there should exist no discrimination among the individuals of a country either religiously or racially.

After the First World War certain principles were stipulated in the general and particular treaties concluded for the international protection of minority rights and many governments accepted to observe equal treatments with all their subjects including the racial, lingual and religious minorities residing in their respective countries.²

Finally with the creating of the League of Nations the

¹ "Huquq-e Bayn al-Milal" (International Law) by Dr. Safdari, Vol. 3, p. 234.

² Ibid.

question of protecting minorities entered a new phase and the League of Nations stipulated: "To guarantee respect for, and observance of the minorities, it should be reflected in their constitutions, and the League of Nations, too, will see to the fulfilment of these obligations."¹

It goes without saying that when the question of safeguarding the minimum rights of the minorities who are citizens of their resident country requires the agreements and emphatic recommendations of the UN, obviously the question of aliens' rights in an international life will be faced with greater difficulties.

In the case of aliens too, it was only bi-lateral or multi-lateral agreements that could safeguard some rights, for them and inspite of the recommendations of the Institute of International Rights which was set up at Geneva in 1874 to the effect that the aliens, independently and without the need of any stipulation in the treaties in their favour, and even without any reciprocal treatment, possess rights and privileges which must be observed by the governments.² This matter was not confirmed by the countries as a binding law and a legal principle. Thus the governments had complete freedom in determining the rights of the aliens, and could devise regulations and determine the rights of the aliens in accordance with their own security, economic and political conditions and on the basis of reciprocal observance of those regulations.

¹ Ibid., p. 235.

² "*Tuquq-e Baynil Milal Khusasi*" (Special International Law), p. 82.

The Aliens in the Era of Government and Law

After the Second World War, when the League of Nations was formally dissolved and the United Nations' Organisation was created with a good deal of fuss and golden hopes by the victors of the war, inspite of its apparent advances in the solution of international difficulties, no fresh steps were taken to protect the rights of the aliens and the minorities.

The last step taken was in 1929 in the form of a great international conference in Paris, but no positive result was obtained inspite of all the efforts made for determining the manner of treating aliens.¹

The steps taken after this conference before, after and during the Second World War, to solve this problem have had no noticeable effect on the situation, and at no time have the rights of the minorities been more violated than at the present period.²

Disregarding the acts of the governments, the jurists have tried to regulate minimum rights for the aliens. For instance Werdross, an Austrian jurist, has proposed the following formula for the minimum rights of the aliens:

Article I:

The governments should grant the particular rights to their alien citizens which are necessary for each individual to continue his life.

Article II:

The governments should recognise the acquired rights

¹ Ibid., p. 80.

² Ibid., p. 80-81.

which the aliens had obtained according to the positive laws of their own, or other countries, should be observed and respected.

Article III:

The governments should observe rights for the aliens requisite for respecting the personality of the individuals, including personal freedom, freedom of dwelling and movement.

Article IV:

The followers foreign nationalities should have the right to appeal to the courts of the countries they reside in.

Article V:

Protecting the aliens against such acts which may result in the damage of their life and property, is the duty of the government the country they reside in.¹

Naturally the analysis and recommendations of the learned lawyers, similar to the conclusions of the international conferences and the emphatic declarations of the United Nations and its charters, provide no executional guarantee, and, so long as they are not stipulated in a formal agreement, they possess only a moral worth.

Therefore in this era of progress, civilisation and law, no just and regular law may be found, which, by its execution, the rights of the aliens can be safeguarded in all countries.

Obviously even bi-lateral or multi-lateral treaties and agreements cannot protect the rights of the aliens inspite of the policy of reciprocal treatment, since, supposing that the French government maltreats some British nationals residing

¹ Ibid.

in France, this act is not a legitimate excuse for a reciprocal treatment of French nationals residing in Britain by the British government, or abusing their legitimate human rights. Naturally, the fact that the French government represents all Frenchmen does not mean that a Frenchman residing in England should pay out of his own human rights for the damage not caused by him, but by his sovereign government, rightly or wrongly, for some political reasons.

International Problems of the Minorities

We have said that oppression and transgression against the human rights are not confined to aliens alone, as the matter of protecting the rights of racial and religious groups, who are in a minority, even though they may be the citizens of their resident country, is in itself an unsolved international problem, for the solution of which nothing had been done until the Second World War beyond the recommendations of the international conferences and the unguaranteed regulations of the League of Nations.

After the Second World War and the creation of the United Nations Organisation, even though the United Nations Charter paid, to some extent, a special attention to the fundamental rights and the liberties of human beings, yet the minority question, as a special case, as was tabled to the League of Nations, due attention. In the peace treaties concluded after the Second World War, even though defeated countries undertook to observe the fundamental human rights and the liberties of their subjects without a discrimination of religion, race and language, yet the minorities have not been protected

according to their special and independant position.¹

In view of the articles of the treaties concluded after the Second World War, it can be said that no special regulations have been drawn up with regards to minority rights, and no particular organization has been set up to supervise this matter.² If something is stated in the treaties about this question, it is usually related to a set of some other political matters which have been under consideration.

The General Assembly of the United Nations declared in the first period of its session: "The high interests of human society require that an end be put to tormenting and molestation of human beings and to religious and racial discriminations."

To carry out this decision in 1947 the Human Rights Committee and its sub-committee for protecting minorities and checking discrimination began to take steps, but their measures never went beyond a comprehensive investigation and study of the question of discrimination and occasional recommendation and emphatic statements.³

In the progressive twentieth century the question of protecting minorities is considered only at a time when it would promote some political objective. In such a case, extensive propaganda is employed for the verbal support of the minority which is to serve the interest of some policy, and then racial or religious discriminations are condemned and minority rights are strongly defended.

If we hear that the world condemns the racial policy of the

¹ *"Huqûq-e Baynîl Milal-e 'Umûmî"* (General International Law) by Dr. Safdari, Vo. 3, pp. 236-7.

² *Ibid.*

³ *Ibid.*

Nazi government and speaks of the German Jewish people as a wronged minority and the savage racial policy of the Nazis as the most fearful, barbarous and cruel conduct, it is because the policy of International Zionism and the padded Jewish government makes it necessary to use all its means and propaganda in various countries in order to cover up all its crimes and aggressions, which are undoubtedly greater than those of the Nazis, and present itself to the world public opinion with a mask of innocence on its savage, tyrannical and treacherous face. Then it condemns the racial prejudices of the Nazis and considers the conduct of Nazi leaders with German Jews, which was the deserved punishments of their treasons, as an evidence of the innocence of the nation of Israel.

Just now the Muslim minority in this Jewish government, whose rulers condemn the racial Nazis' policy, make use of the slightest artificial pretexts to engage in group massacres, destroy Muslims' houses and send them to torture cells and fearful dungeons, while the rest are deprived of most human rights, and live in a state of captivity.

The manifestations and happenings of racial discriminations of the USA, the most progressive country in the world, make one tremble, but the USA, at the same time, considers racial policy of Germany as anti-human and condemns it to annihilation. In Rodesia and South Africa racial discriminations are condemned because of their disobeying the policy of the masters, and the world is called upon to fight and besiege and punish these countries economically.

But thousands kinds of discriminations take place in all parts of the world, where they do not clash with any policy,

or are in favour of a policy, no voice is raised in a loud-speaker to condemn or blame them. On the contrary, they are even confirmed and supported.

Individual Rights Sacrificed to Policies

We may conclude from the above points which were based on the views of the experts on International Law that the rights of the aliens in the constitutional law of various countries depend on the policy of the governments and differ according to the conditions and political interests of each country as well as the terms of reciprocal treatment of the governments. There is no fixed measure which might guarantee the aliens' rights in either international or national laws. Governments are perfectly free in determining the aliens' rights, and have no responsibility before any law or principle.

In such a case the individual and his interests and rights are sacrificed to the interests and the policy of the governments, and in many cases he is treated in the manner of those guilty people who are deprived of human rights, even without having committed a sin.

This is an example of the perverseness, the blind-alleys and the legal errors of the legislators of the progressive world. With their limited ideas and vision, where they make laws for the preservation of social interest, they fail to see the shortcomings in which they are involved due to their limited thought and knowledge. Consequently they are driven to blind-alleys some of which are a disgrace to humanity of today in the form of insoluble international problems in the

world.¹

In later discussions we will deal with the system of the Islamic laws concerning the solution of this problem without noticing the smallest blind-alley in them.

Acceptance of the Aliens

Concerning the right of entering, passing staying and residing of the aliens, there exist two views:

First view:

Absolute freedom of accepting the aliens. The supporters of this view declare that the governments cannot at will prevent the entrance and residence of foreign nationals or limit this right. Vittoria, a learned spanish jurist, says: "If we refer to the history of the human beings, we see that everything was held in common between people at first, and there existed no limitation for individuals, and every person could freely move about without any check, and later on, when land and property changed from being communal into private ownership, there arose no need for checking people's movement on the basis of this change."²

Second view:

Limitation in admitting the aliens. The upholders of this view believe that the governments have absolute freedom in drawing up regulations concerning the entry and residence of the aliens in their territories. According to this view, if no

¹ Respected readers, for further details in this respect may refer to the book "*Islam and International Rights*", under the title "Is man capable of giving law?"

² "*Huquq-e Bayn-il-Milal*", pp. 48-99.

agreement is concluded between the countries, no country is compelled to admit foreign nationals to its territory.

This view was accepted by the Institute of International Law which was established in Geneva in 1928. But a proviso was added that justice and magnimity require that this option should not be misused by the governments.¹

In this connection it should be said that the above views are two opposed ones, both of which go to extremes. In the first view only the right of the individual is considered, ignoring many social and ideal interests, while in the second view, the rights and the interests of the individual are sacrificed to the illusory interests of the society and the policy of the government.

Concerning the acceptance of the aliens, irrespective of the legal views, what is actually observed is that no definite limit and no criteria exist in the function of the governments, and the conditions for the admission of the aliens depend on the attitude and policy of the governments, as is the case with other social, religious, economic, political and judicial rights.²

Therefore every government has the authority to refuse the admission of an alien without giving any reason, or deprive him of civil rights, as well as the rights of citizenship, ownership, commerce, occupation, or reference to the courts of that country, or benefitting from the rights of security, transfer of movable and immovable property, performance of religious or national rites, or even expel him without giving any excuse.

¹ Ibid.

² Ibid.

This is the meaning of the law and the rights in the century of progress, the era of the space and the travel to the moon.

Now we must see what the Islamic law has offered to the human society fourteen centuries ago, and what plans and just solutions did it present for those international problems.

Chapter Two

Generalities

*Minorities protected by bi-lateral
agreements*



Chapter Two
Generalities

*Minorities protected by bi-lateral
agreements*

Generalities

Confederate allies

“Minorities” in the Islamic
Jurisprudence

The Islamic jurisprudence does not consider minorities as alien or as a minority which lacks the power to determine its own rights and destiny visavis the will and interests of the majority. Moreover, there exists no ground for the rise of the problem of racial and minority differences with regard to language, race or any other factor (on the basis of which citizenship is determined in contemporary law) as compared with the majority.

To explain this point, it is necessary to pay attention to the

legal meaning and Islam's view of citizenship.¹ In the Islamic universal law and ideology, the question of citizenship and nationality does not depend on blood, language, territory nor other material factors. It is an optional matter related to the view and attitude of the individuals who form the Islamic society.

Every individual who believes in the Islamic faith is considered a member of the Islamic Society regardless of his race, language, residence, historical background or family.

True unity in the society and among various human groups as seen by the Islamic law, can be realized only through the unity of thought, will power and intellectual inclinations. For this reason an Islamic society or nation consists of different groups which, on the basis of a single view and belief, have adopted a common, harmonious life and a single law to regulate their private and social lives.

In this way, in the Islamic brotherhood, each individual after voluntary acceptance of the covenant (faith) formally becomes a member of the organised Islamic society and assumes its citizenship, and all acquire equal responsibilities and rights before the law in which he believes. Privileges and other material differences disappear. Rich and poor, big and small, black and white, red and yellow, Aryan and Semite, Arab and non-Arab, Asiatic and European, American and African all become brothers and responsible members of the Islamic society.²

¹ This subject is explained in *"Islam and International Rights"*, Chapter Two.

² The noble Prophet of Islam stressed upon this fact in his historical speech his Farewell Pilgrimage. He said: "O people, your Lord is One, and your father is one. All of you are from Adam, and Adam is (made)

It is perhaps for this fundamental reason that the Qur'an has used the word '*Ummah*' instead of (nation), and has called a united society which is composed of different races 'a single *umma*.'

For this reason, in an Islamic society, the unity of which is guaranteed by the unity of thought, belief and resolution, no problem arises in the form of minority, discrimination or race, and every illusory privilege is condemned and abolished. The Imam Ali (A.S.)* stated indisputable Islamic principle in the following brief but profound sentence in the presence of those who demanded privileges on the basis of nobility of blood and race:

Who ever accepts our faith and undertakes our covenant, the precepts of the Qur'an and the Islamic laws and rules will be applicable to him, and no one has any superiority over another except in piety and uprightness."

Conventional Citizenship

In the Islamic society non-Muslims, too, under certain conditions, can take part, and formally join the Muslims and by means of a bi-lateral agreement with them they become united to form a single *Ummah*.

of dust. The most honoured of you in the sight of Allah is the most pious of you. There is no superiority for an Arab over a non-Arab, and for no non-Arab over an Arab, nor for a red over a white, nor for a white over a red, except according to his piety. Have I delivered (the message)? O Allah, be witness! Let the present inform the absent."

When Amirul Mu'minin (A.S.) was dividing the spoils among the Muslims, an Arab objected when he saw his share similar to that of a non-Arab, the Imam said: "I see no merit in this spoil for the children of Ismael over others."

* (a.s.) stands for '*alayhis-salam* (i.e. peace be upon him).

This kind of citizenship which is acquired through a bilateral convention is called *Dhimma* in the terminology of Islamic jurisprudence, and the person concluding such an agreement with the Muslims is called a '*Dhimmi*'.

In such agreements Jews, Christians and Magians (fire-worshippers) can participate, and after signing the agreement they become members of the great Islamic society and are regarded among the Islamic conventional citizens, and as *Dhimmis*, they enjoy all the rights, freedoms and security through-out the Islamic realm, as granted to them in accordance with the agreement they had accepted and signed.

A clear example of this type of agreement was the national unity agreement which was signed by the Prophet and the Jews in the early days of his migration to al-Medinah.

By means of this agreement the Holy prophet united various tribes of al-Medinah and formed a single *ummah* consisting of Muslims, Jews and Arabs. It was stipulated in this agreement that the allies formed a distinct *Ummah* in which the Jews preserved their own creed and the Muslims kept theirs, and in case of any difference, they had to refer to Allah and His Prophet (namely the law of Islam).¹

Thus non-Muslims are never considered aliens and foreigners in an Islamic realm and government, and the word 'alien' cedes its place in the Islamic law and jurisprudence to 'ally', which is more humane and magnificent. As the agreement is voluntarily concluded by both sides, the spirit of unity and harmony and spiritual bond which have their source in option and will power, spreads a shadow of kindness, justice and co-operation over the relations of the Muslims with their allies.

¹ Ibn Hisham's *Sirah*, vol. 1, p. 503

As will be discussed in later chapters, the rights, privileges and freedoms which have been envisaged in the Islamic law for the allies (dhimmis) are by no means comparable with the least rights determined for aliens today on the emphatic recommendations of jurists, United Nations Organization, and its Charter and in the reciprocal treaties in the present progressive and civilized world. Islamic law is not only free from the bad feelings of alienation in the relationship of aliens with the other citizens of the country they reside in, but actually there exists, in it moral bond and a spirit of unity as a result of its humane manifestations.

Two Fundamental Points

To make a more complete survey of the above subject it would be necessary to pay careful attention to the following two points:

1. The nature of the tribute agreement (dhimmah) and the rights and privileges granted to the allies residing in the realm of the Islamic government according to that agreement, as well as its essential conditions, terms, political and legal consequences.

2. The right of admitting non-Muslims in the Islamic realm on the basis of personal agreement of immunity is confirmed, besides its nature and legal implications.

As the discussion of these two points is based on the principle of respecting the commitments and obligation stipulated in reciprocal agreements, we must begin with a brief survey of the legal value of agreements and international treaties in the Islamic law, and then, by Allah's help, we shall deal with the first point, leaving the second one to another opportunity on account of the size of this book.

Legal Value of the Agreements

There is no doubt that the principle of "accepting obligations" is the basis of every kind of social life. If we consider human inclination towards social life as an involuntary and innate attraction, then we must think of "accepting obligations" as something natural and inevitable.

It is this natural principle that manifests itself in an individual's life as a pledge towards a personal program of order and assiduity; and in the world of creation, as acceptance of objective realities and scientific facts; and in connection with acceptance, and acknowledgment, of the Creator of the universe it is manifested as faith and religious obligations.

Other signs and manifestation of the principle of acceptance of obligation are incorporated in man's social relations, his respect for law and social rules, and a wider basis, in international relations, in universal treaties and conventions and in man's remaining faithful to his pledges.

For this reason the roots of 'inclination towards obligations' and 'respect for and fulfilment of pledges' are the same principle, and by admitting them to be natural, this inclination to obligations is considered as the noblest inherent human sentiments.

By paying attention to such principles and inherent roots we can realise the value of obligations and agreements and their humane, natural necessity throughout the human life, especially in social life, and in the greater society of international relations. As the real and exclusive human life must be based on principles, natural desires and on the demands of man's special nature, and since any deviation and shortcoming related to these natural principles and desires are accompanied by a deviation and defect in the individual life of men thus, it follows that the lives of nations, too, in the greater society of mankind, cannot be fulfilled in a worth manner in line with man's natural desire without being based on international commitments and agreements.

Disregarding the natural roots of the principle of the "necessity of accepting commitments", a survey of the living conditions of nations and the changes in international life which can under various conditions cause transformations in the interests and probably even in the existence of nations, clearly shows the intellectual, logical and vital necessity of accepting international agreements and obligations.

Evidently it is not possible under all conditions to resort to force for the preservation of national interests and attainment of desired gains. If we overlook the difficulties of securing and using power, we cannot ignore the fact and the tradition that every power is eventually vanquished by another power.

Therefore, an inclination towards obligations and acceptance of international agreements may be considered the best way for the preservation of the interests and rights of nations, and the necessity which logic and intellect induct in the international life of human beings.

Moreover, peace and co-existence are fundamentally among most revered human ideals, and, without a doubt, of the undeniable mental and vital human wants. For the establishment and permanence of peace and co-existence, no deeper, more effective and practical factor can be found than principle of acceptance of obligations and conclusion of international agreements.

International agreements constitute the best legal boundaries for the rights and interests of nations, and are the most potent guarantee for the establishment and maintainance of peace, as well as the most effective media of understanding and concord in the life of the big human society.

Obviously peace legally and convincingly be best inculcated in the relation of nations when its roots deeply penetrate the spiritual and moral emotions of human beings through pacts and agreements, and, like other spiritual duties or ethical principles and natural desires of nations, develop a profound link. We dare say that human beings will never find peace as long as they do not limit their greed, ambitions and profit-seekings within the framework of pacts and agreements.

The Only Legal Source

It is usual in legal discussions to take the principles of 'International Traditions and Customs' and 'the positive Law' along with the international agreements as the three sources of the International Law.

There may exist a reason in the minds of the jurists for multiplying legal sources, but, upon reflection, what seems decisive in the nature of the above principles is the singular-

ity of the source of the International Law and the convergence of the above principles on that singularity which can be nothing but the commitments and agreements mentioned above.

If we reflect on the root of International Traditions and Customs and the factors that create and circulate them, we will find their earliest forms to be a kind of limited agreement by which individuals or some groups have bound themselves. And then, other groups who have felt an inclination to, or a need for, that agreement in their relationships, have gradually joined it and undertaken its observance. Subsequent commitments have naturally extended the influence of such agreements and have eventually given them the form of International Tradition and Customs.

Why do nations consider themselves bound, in international fields, to observe the International Traditions, Customs, Exigencies and Principles? Is there a need for observing them even after realizing that they are not being respected by other governments? What is the philosophy of the principle of reciprocity in such cases?

The answer to such questions is nothing but that the acceptance of the rules based on International Traditions and Customs binds other nations because of an implied obligation and commitment to what the majority have committed themselves, and like other moral principles and other aspects of social life, they acquire a binding force and respect. But it goes without saying that such an acceptance, inspite of its incumbency, never loses its conventional and contractual nature and is inseparable from it.

In comparing these two legal sources to show which of

them is more important in international questions, some jurists have made the following statement: "Though the International Traditions and Customs are not codified, yet they possess this advantage, over other legal sources, that they are older and more universal, whereas agreements lack these two features and cannot therefore be absolutely and generally binding."

George Sel, a famous jurist, and Professor Alvarez, an American jurist, relying on the above statement, have preferred the priority of the exigencies of International Traditions and Customs in international disputes.¹

A number of other jurists attach more importance and give priority to commitments resulting from agreements since they are better codified and more explicit, and the elements of option, resolution and independence are more evident in them, and they consider the change in the International Traditions and Customs, which are gradually and actually replaced by agreements, due to the said principle.²

In view of the common basis of 'the International Traditions and Customs' and 'agreements' in the factor of obligation or commitment both of which are derived from this single principle, it must be said that the arguments offered in the above evaluation in support of each of the two said views lack legal value from the viewpoint of conclusion since neither the generality nor the unconditioned state of the obligations resulting from the International Traditions and Customs, nor the explicitness and codification of agreements, nor historical precedence can serve as a distinctive factor in de-

¹ *The General International Rights*, by Dr. Safdari, Vol. 1, pp. 162-164.

² *Ibid.*

termining their hierarchy and legal values. We can even suppose each of the apparent distinctions to belong to the other side, as in the general agreements which are approved and signed by all nations, or the codified commitments derived from the recorded International Traditions and Customs.

Initially, it should not be neglected that rule and principle binding commitments must always stem from resolution, option and utter independence. On this basis the contradiction of International Traditions and Customs with obligations and agreements can be conceivable only when the obligations arising from the International Traditions and Customs be in conflict with both parties or one party in the agreement and lack the element of free will and deemed to be an imposition. Clearly, with such a supposition, the International Traditions and Customs in relation to the concerned governments lose their legal value. The imposition of any undertaking, even if it takes the form of the International Traditions and Customs, is considered a violation of the right of the related nations to freedom and independence.

When a tradition and a custom are approved, obligations contrary to them are not possible except through the breach of the previous commitment. In this case, too, the supposed conflict between the obligations resulting from the International Traditions and Customs, and obligations due to an agreement is inconceivable, and a discussion of the priority right of either is useless.

It is surprising that Alvares, head of the New School of International Law, considers the violation of the freedom and independence of nations, in connection with the above point, as a legitimate right for the United Nations Organisation. He

believes: "Some decisions of the United Nations are binding for world governments even if some governments have not explicitly declared their agreement with those decisions."¹

Moreover, he considers the general legal principles accepted by the civilised(!) nations prevailing over the will and destiny of other nations and by adding several other articles, he mentions these 13 articles as the source of the new international laws.

The Role of Free Will in Legal Matters:

Respect for freedom of the will is the most authentic basis and essential auditor of human life, and without doubt, the value of human life in both its individual and wide social dimensions is wholly connected with the extent of the role of this principle in the conditions ruling over their lives. All laws and regulations, are also subject to this basic principle and law of human life and there is no exception to it.

The acceptance of obligations or commitments, the natural necessity, which we proved at the beginning of this discussion, even by the grace of the free will of both parties, only, claim human respect and legal worth notwithstanding all its ramifications and extensive role.

Opposite to the principle of free will is the rejected and unacceptable principle of imposition, which in any form and shape or derived from any factor or element, is condemned and rejected by man's nature.

For this reason the legal results of obligations and agreements which are considered binding, can not be taken as something imposed since every legal agreement is derived

¹ Ibid., p. 165.

from free will.

We have discussed this point in detail in our previous analysis, and our conclusion now is that in the sphere of the international relations, as in other spheres of human life, the principle of free will must be recognised as the only governing principle, and all international laws and every regulation which necessitate the acceptance of responsibility and commitment are to be derived from this human principle.

For this reason voluntary undertakings are the main source and fundamental basis of international law, and the legal relations between governments are secured on elements which embody their voluntary undertakings. Every other principle such as the International Traditions and Customs, positive laws, regulations and decisions of world organisations, or legal rules approved by civilised governments as well as other principles that are considered by the jurists as sources of new international law, are without validity and legal value if they lack voluntary undertaking; as man's nature and life accept only that kind of obligation which is based on the principle of voluntary acceptance.

The Nature of the Agreement and its Effects:

Now we can easily understand the nature of agreements and pacts, both within the framework of international and internal relations defined as follows:

'An agreement is a kind of voluntary undertaking which is formally accepted by two or more parties for the purpose of the performance or relinquishment of a task or tasks in an absolute or conditional manner.'

As undertakings are usually accompanied by previous agreement and good will of the parties concerned, we may conclude that in defining an undertaking the phrase 'agreement based on mutual expediency' may be taken to mean a 'requisite condition for the undertaking', not 'an element of substantive affect.'

Clearly, an undertaking in the sense of the explicitness or implied commitment in it, as described in the comparison between agreements and the International Traditions and Customs, does not create any difference in the substance of an undertaking. Similarly, the fact that an undertaking may be general and absolute or confined to one or several parties, or its being permanent or temporary, has no effect on the substance of the undertaking. After all, the effect of the agreement in all cases depends on the quality and quantity of the reservations envisaged by the contracting parties in the text of the agreement.

It goes without saying that the manner of concluding agreements may be different in different cases and under different conditions, and such conditions as the drawing up text of the agreement, and the written mention of the persons or the group responsible for it at the opening section of the text, and the signing or preparing copies of the agreement, or of the previous negotiation, etc. are mostly formalities the absence of which has no effect on the legal worth of the agreement if it has been legally concluded.

What is meant by the effects of an agreement is the responsibilities and legal bindings to which the contracting parties are committed upon the conclusion of the legal formalities of the agreement, or the rights which are envisaged

for the contractors according to the terms of the text of the agreement, with the provision that the contractors have no obligation at all to make use of the second section.

Naturally, the said effects have legal value only in connection with the contractors and signatories to the agreement, and for this reason it becomes legal. But the legality of such an agreement does not mean that it is binding on all, even on the governments that have not signed it.¹

Generally speaking, in the agreements concluded between two or more governments, the binding legal dimensions are applicable only to the contractors, and they do not cover other governments who have not signed it. But their non-obligatory rights and consequences may be considered for other uncommitted governments, or, due to special terms of the agreement, uncommitted governments, too, may benefit by its advantages.

The Worth of the Agreements in Islam:

The previous surveys acquaint us with the deep philosophy of the value, respect and importance that Islam attaches to the question of agreements in various aspects of the human life. This evaluation and legal importance which are an exclusive feature of Islamic law can be gathered from the study of the texts which exist within the folds of the documents related to

¹ Mr. Stark, the British lawyer, believes that in order to consider an agreement among the legal covenants, its regulations must be agreeable to all the governments, or most of them, particularly the big ones. It is taken for granted that such an agreement will enjoy full importance, and, practically, even the governments which had not openly accepted it would not be able to act against it. Actually, as has already been explained, the rejection of this theory, too, is obvious.

the Islamic laws. Now you may have a glance at some of these texts:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اَوْفُوْا بِالْعُقُوْبِۙ

1. "O you who believe, fulfil the obligations."

(Sūratul-Mā'idah/1)

وَ اَوْفُوْا بِعَهْدِ اللّٰهِ اِذَا عٰهَدْتُمْ وَّلَا تَنْقُضُوْا الَّذِيْنَ بَعَدَ تَوْكِيدِهَا

2. "And fulfil the covenant of Allah when you have made covenant, and do not break the oaths after making them fast."

(Sūratun-Naḥl/91)

What is more worthy of notice in this verse is that here the Qur'an speaks of agreements as the covenant of Allah and reminds the contracting parties that concluding an agreement is like concluding a covenant with Allah, and such a covenant is subject to being called to account. Another verse says:

وَ كَانَ عَهْدُ اللّٰهِ مَسْئُوْلًا

"And Allah's covenant shall be inquired of"

(Sūratul Aḥzāb/15)

فَاتِمُوْا اِلَيْهِمْ عَهْدَهُمْ اِلَىٰ مُدَّتِهِمْ اِنَّ اللّٰهَ يُحِبُّ الْمُتَّقِيْنَ

3. "So fulfil their agreement to the end of their term; surely

Allah loves those who fear Allah”

(Sūratut-Tawbah/4)

فَمَا اسْتَقَمُوا لَكُمْ فَاسْتَقِيمُوا لَهُمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ

4. *“So long as they are true to you, be true to them, surely Allah loves those who are careful of their duty.”*

(Sūratut-Tawbah/7)

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

5. *“And fulfil the covenant; surely the covenant shall be questioned about.”*

(Sūratul Isrā’/34)

وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا

6. *“And the performers of their covenant when they make one.”*

(Sūratul Baqarah/177)

الَّذِينَ يُوفُونَ بِعَهْدِ اللَّهِ وَلَا يَنْقُضُونَ الْمِيثَاقَ

7. *“Those who fulfil the promise of Allah and do not break the covenant.”*

(Sūratul-Ra’d/20)

وَالَّذِينَ هُمْ لِأَمْتِنِهِمْ وَعَهْدِهِمْ رَاعُونَ

8. "And those who are keepers of their trusts and their covenant."

(*Sūratul Mu'minūn*/4) and (*Sūratul Ma'arij*/32)

In the said few Qur'ānic verses, the importance of the agreements and the necessity of fulfilling them are taken beyond their legal limits to the extent of regarding them to be the mark of faith, as it seems that the good fulfillment of a covenant stems from faith itself, while breaking one's word is caused by a weak faith or a complete unfaithfulness, as is inducted from the verses 4 and 7 of *Sūratul Barā'ah*, to the effect that giving a word and keeping it are completely connected to the spirit of fearing Allah, and to separate these two would cause the destruction of that spirit.

There are numerous Islamic narratives to this effect, some of which refer to those who break their promises as renegades and faithless, as the breach of promise is regarded one of the capital sins.

The Mandate of the Imam Ali (A.S.)

We may study the logic of Islam in a wholly clear and explicit way in the famous mandate of the Imam Ali concerning respect for agreements, their legal worth and the necessity of their fulfillment.

A part of this mandate, addressed to Mālik al-Ashtar (governor of Egypt), says:

"Whenever you conclude an agreement with your enemy or bound him with your pact and commitment, fulfil your promise faithfully and observe your agreement most honestly, and use your possibilities like a shield to protect what

you have undertaken, for among the ordinances of Allah there is nothing as important and necessary as the fulfilment of promise in a society of people in spite of the differences of their desires and views.

“Do not seek excuses in your covenant, and allow no treason and trickery to affect your promise. Do not mislead your enemy by deceit. No doubt only the ignorant opposes Allah has by His Grace placed promise and covenant among His servants as a means of tranquility of life and has made it a sanctuary for people to live in peace, and through it to find blessings and goodnesses. Therefore no fraud, doubt nor deceit are permissible in it.

“The difficulty of the task in which you must observe Allah’s covenant should not lead you to violate that covenant unfairly, for, your fortitude in tolerating the hardship and difficulty which you hope to be eventually rid of, is better than the trick and the cunning whose punishment you are afraid of, fearing being called to account by Allah without having the hope of asking forgiveness in this and the next worlds.”¹

Invitation to Conclude Political Agreements

In the Islamic ideology, peace and co-existence are considered the most fundamental principles in international relations. For this reason it is recommended to make use of suitable opportunities for strengthening and creating conditions for peace-treaties in the foreign relations of the Islamic soci-

¹ *Nahjul Balaghah*, by Shaykh Muhammad ‘Abduh, pp. 536-7.

ety.¹

In order to establish peace among nations and prevent the rise of hostile relations and bloody disputes, Islam has not only given a great legal value to international pacts and agreements, but it has also invited other nations and groups to conclude such pacts and agreements and has recommended the Islamic society to always be a pioneer in this task and not to abstain from every effort to create and expand a basis for it in all human societies, and use every possibility to attain to this human and Islamic ideal. In many cases this recommendation is made an incumbent duty and an obligation, and the conclusion of peace-agreements is considered a duty of competent and responsible Islamic governments. This duty is emphasised when inclination is shown by non-Muslim governments and groups for the conclusion of peace treaties.

It is on the basis of "the originality of peace in international relations" that Islam considers the duty of the legal authorities of the Islamic society is to welcome the proposals for the conclusion of peace treaties which are not contrary to the genuine ideological goals of Islam. The logic of the Qur'an in this connection is as follows.

وَإِنْ جَنَحُوا لِلسَّلَامِ فَاجْتَنِحْ لَهُمْ وَتَوَكَّلْ عَلَى اللَّهِ

1. "And if they incline to peace, you, too, incline to it and put your trust in Allah". (Sūratul-Anfāl/61)

What the Qur'an says in this connection is very noteworthy, for it gives the implication that peace and co-existence

¹ As this subject has been fully discussed in our book "Islam and the International Rights", there was no need to repeat it.

between human beings are so desirable that man should show love for them and proceed towards them in the same way that a chick flies towards its mother under whose wings it finds a secure haven.

فَإِنْ اَعْرَضُوْكُمْ فَلَمْ يُقَاتِلُوْكُمْ
وَالْقَوٰاۗءِ اِلَيْكُمْ السَّلٰمَ فَاَجْعَلِ اللّٰهُ لَكُمْ عَلٰیهِمْ سَبِيْلًا

2. "Therefore if they withdraw from you and do not fight you and offer you peace, then Allah has not given you a way against them." (Sūratun-Nisā'/90)

يٰۤاَيُّهَا الَّذِيْنَ اٰمَنُوْا اِنَّا ضَرَبْنٰكُمْ فِيْ سَبِيْلِ اللّٰهِ فَتَّبِعْتُمْوْا وَلَا تَقُوْلُوْا لِمَنْ اَلْفَقِ
اِلَيْكُمْ السَّلٰمَ لَسْتُمْ مُّؤْمِنًا تَبْتَدُوْنَ عَرَضَ الْحَيٰوةِ الدُّنْيَا فَمِنۡد
اللّٰهِ مَفٰازٌ كَثِيْرَةٌ كَذٰلِكَ كُنْتُمْ مِنْ قَبْلُ فَمَنْ اَلَّ اللّٰهُ عَلٰیكُمْ
فَتَّبِعْتُمْوْا اِلَّا كَمَا كَانِ اللّٰهُ كَانَ يَمٰا تَعْمَلُوْنَ خَيْرًا

3. "O You who believe when you go to war in Allah's way, investigate and do not say to any one who offers you peace: 'You are not a believer', seeking this world's transitoriness with Allah there are abundant gains! You too were such before, then Allah bestowed His Grace on you; therefore investigate; surely Allah is aware of what you do." (Sūratun-Nisā')

In some cases the proposal of peace may be used as a cover for hostile intentions towards the Muslims. But so long as the Muslims are not sure of the treacherous intentions of the governments and groups which propose peace, they should not reject such proposals.

In such cases the Qur'ān, while recommending the acceptance of peace by the Muslims, assures them that if the con-

tracting party cherishes evil intentions, the lord of the Islamic society will aid the Muslims to win victory.

وَإِنْ يُرِيدُوا أَنْ يَخْدَعُوكَ فَإِنَّ حَسْبَكَ اللَّهُ هُوَ الَّذِي آتَاكَ
بِنَصْرِهِ وَبِالْمُؤْمِنِينَ

4. "And if they intend to deceive you, then surely Allah is sufficient for you, He it is who strengthened you with help and with the believers." (Sūratul-Anfāl/62)

Now that we are acquainted with the Qur'ān's view concerning the necessity of welcoming the offers of peace and co-existence in international relations, we may glance at this phrase of the eternal mandate of the Imam Ali (A.S.) in this connection:

"Do not refuse a peace to which your enemy invites you and in which lies Allah's pleasure, for, it is at the time and conditions of peace that your forces find greater readiness and you are relieved of anxieties, and your country enjoys security."¹

Explicitness of International Agreements

One of the important points in international pacts and agreements, from the viewpoint of Islamic laws, is their explicitness which is greatly emphasized in Islam.

The reason clearly, is to block the way of deceit and seeking excuses and to prevent damaging the interest of the contracting parties and hence, to the agreement per se and its consequences. This prevents an agreement from requiring

¹ For more details please refer to "Islam and International Rights", pp. 89-99.

interpretations with the passage of time as well as the occurring alterations or distortion in it.

Just now we come across long discussions on the subject of the modern International Laws called the 'interpretation of agreements' related to their analysis and advisability.

But to prevent such difficulties from arising in international agreements and to avoid excuses for their alteration and interpretation, it is stipulated in Islamic law that the texts of agreements must be written in a perfectly clear and explicit manner, and avoid every ambiguity or use of phrases with double meanings, so that no problem would arise at the time of their execution.

In the treaties and agreements which the Holy Prophet concluded with various groups, he observed this principle most carefully, and after each negotiation used to order his writers to register up the texts of the agreements, and even the names of the scribes were written at the end of the treaties.¹

The Imam Ali (A.S.) instructs, in his mandate, the governor of Egypt:

"Never conclude an agreement in which there is some excuse or other, and after making your declaration solid in the agreement, do not follow it by a phrase that would weaken it."²

Competence for Drawing up Political Agreements

In modern laws competence for conclusion of international

¹ Commentary on *Sahihul Bukhari*, Vol. 14, p. 12.

² *Nahjul Balāghah*, Shaykh Muḥammad 'Abduh, p. 536.

agreements is granted solely to the heads of governments or their official deputies. Thus the people of a nation as well as non-organized groups (lacking a government) are deprived of this right.

But in Islamic law a wider meaning is given to international agreements, and the legitimate human right of concluding peace agreement is formally recognised for non-organized individuals and groups, too. According to this principle individuals or religious minorities may negotiate with competent Muslim authorities for the conclusion of a peace treaty, ratify and sign it. This matter is clearly seen in the question of the tribute dhimmah agreement.¹ In Quarter and immunity agreements even a Muslim individual may conclude a political immunity agreement² with a non-Muslim individual. In all these cases a Muslim society and competent Islamic government are bound to observe and confirm the agreements, and there exists no difference or privilege in it from the viewpoint of legal worth.

Protection of International Agreements

According to Islamic law not only the initiative for conclusion of international agreements has been recommended to the Muslim society, but its protection, too has been entrusted to the Muslims who have been emphatically advised to fulfill them most alertly and carefully so that they may not be executed one-sidedly nor the committed enemy's reaction be neglected.

The Qur'an warns the Muslims not to neglect their duty in

¹ Re: Ch. 3 of this book.

² This subject has been discussed elsewhere in this book.

taking full care of such agreements and the manner of their proper execution, and to retaliate if they suspect evil intentions.

In this connection the Imam Ali (A.S.) advises Malik al-Ashtar: "Do not refuse the enemy's proposal for peace....but be alert and after making peace with the enemy, beware of him, for, he may approach in order to take you by surprise... "Therefore use caution and care, and be not deceived by your good intention, rather mistrust your optimism."¹

Though treachery and violation of promise are considered great sins in Islam, yet in the same way that an Islamic society does its utmost in accordance with this order to protect and execute the terms of concluded agreements, it has a similar expectation in respect of the other party to remain loyal towards what they have undertaken. Thus a right is envisaged by Islamic law for the Muslims whose rights have been damaged through a violation by others, to take measures to the violators. This punishment is not intended as a means of taking revenge, but rather to discourage such anti-human violations and treasons through such a corrective reaction, and make the fulfilment of a promise binding, and prevent an abuse of the sense of responsibility and the academic approach of the Muslims and loyalty to their commitments.

The Qur'an says in this connection:

فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَنَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ

"Then fight the leaders of disbelief-surely they keep no oath so that they may desist." (Sūratul-Tawbah /12)

¹ *Nahjul Balāghah*, commentary by Shaykh Muḥammad 'Abduh, p. 536.

In another verse violence is suggested for the chastisement of violators:

الَّذِينَ عَاهَدْتَ مِنْهُمْ ثُمَّ يَنْقُضُونَ عَهْدَهُمْ فِي كُلِّ مَرَّةٍ
وَهُمْ لَا يَتَّقُونَ ﴿٥٦﴾ فَإِنَّمَا أَتَقَفْنَاهُمْ فِي الْحَرْبِ فَشَرِدْ بِهِهِمْ
مَنْ خَلَفَهُمْ لَعَلَّهُمْ يَذَّكَّرُونَ

"Those with whom you make an agreement, then they break their agreement every time and they do not fear Allah, therefore if you overtake them in fighting, scatter them to the last one and make an example of them for those who follow that they may be mindful." (Sūratul Anfāl 56-7)

The prophet's treatment and punishment of the Jews of al-Medina who were guilty of perjury and treason can be taken as a good example of the execution of this principle. The Jews of Banu Qaynuqā' tribe had openly and repeatedly violated the treaty of non-aggression and mutual defence; so they were eventually banished from the neighbourhood of al-Medina. The Jews of Banun-Nazir, too, who had shown their peculiarity of breaking their promise and had also made an attempt on the life of the Prophet in spite of their joint agreement, had the same fate as their Jewish brethren.

The Jews of Banu Qurayzah, too, when their treason as revealed at a most difficult time when the Muslims were besieged by the strong forces of Ahzab, were punished on the verdict of sa'd ibn Ma'adh, a judge and arbitrator of their own choice.¹

Permanent and Provisional Agreements

Peace agreements and international treaties which are

¹ Re: *Religious Co-existence in Islam*, by Mūsā al-Arab.

concluded between Muslim societies and non-Muslims may be either permanent or provisional.

Tribute agreements, which will be discussed later, belong to the group of permanent peace treaties which remain binding and keep their legal value except in the case of violation of them or negligence in carrying them out.

The Immunity agreement, which will be detailed later, is concluded as a temporary pact, giving the possibility to the applicant who wants to change it into a permanent tribute agreement for permanent stay in the Muslim realm, after declaring his readiness to accept it.

The *Hudna* agreement, which is another formal international pact in the Islamic law, should, according to many jurists, be drawn up temporarily. The duration of this pact, too, varies from the viewpoints of the jurists. Some jurists, relying on the act of the Prophet in the *Hudaybiyyah* peace agreement with the pagans of Mecca concluded for ten years, believe that its maximum duration should be ten years. But other jurists think that the *Hudna* agreement may, in case of expediency, be prolonged for more than ten years, and some others believe that it should be permanent.¹

The said agreements, each of which may have an effective role in establishing a humane and honourable peace, embody the rights and peaceful intentions of both sides, and on general the rules of contracts, every specification and privilege agreed upon must be clearly and without any ambiguity expressed in the text of the agreement, depending on the terms, kinds and circumstances of each pact, and both contracting

¹ This subject will be handled in a separate book.

parties jointly undertake the duty and responsibility of carrying out its terms.

This established Islamic principle, besides not being contrary to the world view and the idea of universal unity, which is the ultimate goal of Islam, is also a means for expansion of the Islamic call, because Islam desires the Islamic ideas be propagated through peaceful and pacific ways and under conditions where the principle of co-existence is dominant.¹ In other words, in view of the existence of ideological, territorial and racial differences, the Islamic society is bound before such differences to take necessary steps through agreements for the establishment of security, peace and co-existence. Concurrent with the application of this doctrine, the Islamic society is entrusted with the duty of propagating for the Islamic beliefs to the extent of going beyond the territorial, racial and ideological boundaries which have produced division among the single *Ummah* of mankind, taking the form of a universal and international school of thought, and by peaceful means establishing itself over the whole of human society.²

It is surprising that the writer of '*Peace and War*' should err in this connection, an example of which is the following statement.

"As the general attitude of the Islamic legislation concerning the relations between Muslims and non-Muslims is not pacific but rather warlike, therefore the duration of agreements is naturally temporary, and since *Jihad* (holy war) can-

¹ For further details please refer to "*Islam and International Rights*", pp. 70-86.

² For further explanations refer to *Islam and International Rights*, pp. 70-86.

not theoretically be postponed for more than ten years, the term of such agreements must necessarily expire, even if it is not stipulated in the agreement.”

The Principle of Obligatory Fulfillment of Promises and respecting them

In view of the explicit evidences quoted here from Qur'ān and the Tradition (of the Prophet) are not only indisputable but, as it was stated, they are distinct feature of the legal and moral teachings of Islam. According to the emphatic injunctions given in the Qur'ān and the Tradition, the Muslims are not only bound to be loyal to the terms of agreements, but are also obliged to preserve the pacts. The brief and meaningful utterance of the Prophet to the effect that “Muslims are bound by their terms” is a fine and interesting reference to this legal and ethical point.

Annulment of International Agreements

According to this principle, agreements remain fully in force inspite of change of rulers, ruling authorities or changed conditions, and the succeeding ruler has no right to alter or abrogate an agreement which has lawfully been concluded between an Islamic society and other groups. This is also true of every kind of treaty, whether permanent or limited and provisional.¹

Obviously, on one condition can a Muslims' legal government ignore an existing formal agreement and declare it null and void, that is, when a perceptible danger threatens the Is-

¹ *Jawahirul Kalām*, Vol. 21, p. 313.

lamic society from the other side, and the enemy intends to abuse the treaty of peace for his own reinforcement and recovery of his fighting readiness, by exploiting the good will of the Muslims or transgressing their legitimate rights.

In such a case the Qur'an commands as follows:

وَأِيمَاتُهَا يُنْفِثُ مِنْ قَوْمٍ مُخْلَصِينَ فَأَنْبِذُوا إِلَيْهِمْ عَلَىٰ سَوَاءٍ إِنَّ اللَّهَ لَا يُحِبُّ الْمُخْلَصِينَ

"And if you fear treachery on the part of a people, Then throw back to them (their treaty) fairly, surely Allah does not love the treacherous." (Sūratul Anfāl / 58)

In cases the Muslims annul a treaty unilaterally, it must be based on a definite proof confirming the danger and the treacherous intention of the other side. But the probability of treachery without the support of sure evidence does not justify one-sided abrogation of an agreement by the Muslims.¹

Moreover, in cases when Muslims' interests necessitate the annulment of an agreement, or if a peace treaty becomes detrimental to the Muslims interests, due to changed conditions or when a change is made in the leadership of the Muslims, no competent Islamic authority can effect a one-sided abrogation of international agreements.

This is another advantage of the Islamic Law over modern international law, since in many cases the one-sided abrogation of international agreements is allowed in the positive law,² while considering a one-sided annulment by the Muslims illegal by the law of Islam, in many agreements such as

¹ Ibid., p. 294.

² *General International Rights*, Vol. 1, p. 193.

the tribute and Temporary Immunity treaties, the other party is allowed to declare it null and void, if he intends to leave the Muslims' realm.

It must be pointed out here that in one case international agreements are considered null and void even if they are concluded legitimately, and that is when the terms of the agreement are found to be contrary to the universal goal of Islam. Therefore, any treaty which is an obstacle in the way of the spread of the Islamic ideology, or if after its legitimate conclusion it is placed in such a condition, it naturally loses its legal value and is considered null and void by the universal logic of Islam; for Islam preserves for itself freedom of thought and belief and freedom of invitation to Islam as a legitimate right, and no factor, not even an international agreement can deprive Islam of this natural right. Islam considers this deprivation contrary to the freedom of thought and religion. Therefore, any treaty which deprives this right either at the time of its conclusion or under certain conditions after it is legally concluded, is considered as an imposed and objectionable agreement.

The philosophy of the Islamic *jihād* has its source in this universal idea, and a liberating combat is allowed in order to fight those elements which intend to put a barrier in the way of the universal invitation to Islam and the progress of Islamic ideology. Peace agreements, too, are concluded as a means of removing international difficulties and obstacles in the above matters.

Competent Islamic Authority for Concluding Agreements

In the time of the Prophet (A.S.) the competent authority was the Prophet himself for concluding Tribute Agreements and temporary *hudnah* pacts of armistice with the pagans.

In other cases the responsibility for this task was entrusted by him to Muslim leaders and governors.

After the demise of the great leader of Islam, this authority like other aspects of statehood, was handed over to his successors and executors of his will who had been explicitly granted this right. According to the Shiite belief, this religious leadership belonged to the Prophet's household, and in the time of the absence of the last Shiite Imam, namely the Imam al-Mahdi (A.S.), it is relegated to the decision of chaste jurists.

Another kind of international agreement, which is called 'Immunity pact' is of general character and becomes official with the approval of any Muslim, and binding on all.

But the treaties concluded by governments ruling over Islamic lands, without having secured the above competence, with non-Muslim governments or groups, are not binding on the Muslims when such treaties are not in their interests and they shall be invalid from the viewpoint of the Islamic Law.¹

But with regard to international agreements necessitated by urgent expediency of the Muslims or which are in the interest of the Muslim society, the steps taken by just and righteous individuals are considered valid when taken in the absence of the competent authority, such as a fully qualified jurist-

¹ *Tahrirul Wasilah*, Vol. , p. 466.

dent, as mentioned in the Hisbah Law related to urgent cases.

Jurisprudents have, however, respected the Tribute pacts concluded with cruel rulers as binding on all Muslims.¹

We will discuss each of the Tribute, Immunity and Hudnah agreements separately and at length.

¹ *Jawahirul Kalam*, Vol. 21, p. 276, also in this book, under the title: "The Responsible for Concluding a 'Tributary Agreement'".

Chapter Three

The Law of Tribute Agreement

*Legal Value of the Treaty
of National Unity*

Tribute agreement

or

Treaty of National Unity

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The Law of Tribute Agreement

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Treaty of National Unity

In order to put an end to a hostile state and create a kind of alliance and national solidarity and collaboration between the Islamic society and the non-Muslim groups within the Islamic realm, a special agreement called *Dhim-mah* or 'Tribute' agreement has been envisaged in the Islamic law which is most remarkable in its nature and legal vestiges in comparison with modern international pacts, and in the treatment of the aliens and the minorities.¹

¹ The tributary agreement can be concluded with non-Muslim countries, though a little different from that concluded with the individual non-Muslims residing in the Muslim countries. This kind of agreements is out of our concern just now.

Non-Muslim individuals and groups who intend to reside in the Islamic lands, can benefit from legal advantages and suitable freedoms through the conclusion of a tribute agreement, the main purpose of which is to provide an environment of security, mutual understanding, common life and peaceful co-existence between various creeds within an Islamic realm.

For this reason the tribute agreement is concluded on the basis of the free-will and total agreement of both parties, and in this respect it is wholly different from the imposed rights and privileges which are envisaged in contemporary international law concerning the aliens and the minorities.

Of course the word freedom used here does not mean that every non-Muslim without signing the tribute agreement can reside in the Islamic lands, like other tributaries and enjoy the social rights of the Muslim society, for, this kind of freedom is not only detrimental to the rights of Muslims, but is also incompatible with all laws and rules.

What is meant by free-will in having the right for signing the tribute agreement is that every non-Muslim, who has the necessary qualifications for tribute agreement, can, without the slightest compulsion or imposition, take part in this reciprocal pact, or leave the Islamic territory and emigrate to any other land he wishes.

Clearly, any individual or group unwilling to sign a pact for a common life and organised nation and co-operation, must leave that society, and no law can permit the residence of those who have no desire for concord and common life in a country with whose nation they have contrary views and beliefs.

In the Islamic law, the non-Muslims who have no desire to conclude mutual tribute agreement, are sent to a safe land desired by them under the complete protection of the Islamic government, and before reaching a safe place of refuge they are protected, in every way, by the Muslims.¹

Accordingly, the residence of non-Muslims in the Islamic lands on condition of being qualified, depends on their participation in the tribute agreement, after signing which they will be considered as members of the great Islamic society.

The freedom of individuals who are competent to conclude the tribute agreement is respected by the Islamic law to that extent that the said agreement is not stipulated to be permanent and definite. The right is reserved for tributaries that, in case of their unwillingness to bind themselves to the said agreement, they can annul the tribute agreement and go to their desired land outside the Islamic realm.

The worth of this free-will becomes clearer when we see that the tribute agreement is binding for the Muslims, and so long as the tributaries respect their pact, the Muslims can never abrogate it or refrain from carrying out its terms.

The value of this free choice is better illuminated by paying attention to the following point: The adherence to the Tribute Agreement is compulsory on the part of the Muslims, and as long as the tributaries respect it, the Muslims can never annul it nor disregard its stipulations.

The late Allamah al-Hilli, in his *Tadhkiratul Fuqahā*, puts this matter in a nut shell and says: "Concluding a Tribute Agreement by the non-Muslims is not necessarily required to

¹ This kind of protection covers every non-Muslim who has got the official permission of "security" to enter the Islamic territories.

be permanent, as they can rejoin their own land anytime they like.”

The reason for this freedom is that the main goal of Islam can be achieved only in this way. By means of such a joint agreement Islam has devised the plan of a united society the members of which, inspite their differences of belief and faith, undertake the responsibility of conducting a common life based on collaboration in turning the wheels of a great and sound society, and such a human co-existence is not possible except through the preservation of the legitimate human freedoms.

Another interesting advantage of Tribute Agreement is the necessity of its acceptance by the Muslims, in the sense that the Muslims and the Islamic government are faced with two kinds of obligations in connection with the conclusion of this pact:

Firstly:

They must invite religious groups to conclude this agreement, and without a formal invitation they cannot engage in any clash or molestation with them.

Secondly:

Whenever a proposal is made for the conclusion of a Tribute Agreement by religious groups (Jews, Christians and Zoroastrians) to Muslims, the Islamic government is obliged to welcome their offer, and is not permitted to reject the offer of peace even when the conclusion of a tribute pact may not be in the interest of the Muslims. Even though the Muslims may have a full domination over the said groups, the accep-

tance of peace proposal and conclusion of the Tribute Agreement is obligatory.¹ This is because the principle of the acceptance of the Tribute Agreement has never depended on the expediency of the Islamic society, and it is always considered urgent and obligatory. Thus this urgency creates a legitimate right for religious minorities in a permanent way.²

Naturally, such privileges that are envisaged in the Islamic law for minorities are peculiar to the universal ideology of Islam and we can find the like of it in no other legal system.

¹ *Jawahiral Kalam*, Vol. 21, p. 294.

² *Ibid.*

The Nature of the Tribute Agreement

The nature of every legitimate agreement and pact is based, according to the viewpoint of the Islamic law on three principal foundations:

1. and 2. The two contracting parties
3. Affirmation and acceptance of the agreement verbally or in a written form.

Thus, an agreement means an undertaking by both contracting parties to carry out its terms. The Tribute Agreement, too, follows this general rule of being based on the said three foundations, and thus it finds a legal value and the execution of its terms becomes binding on both parties, in the same way that other agreements are.

As there are for each of the above foundations certain and limited conditions in the Islamic jurisprudence, it would be necessary to deal with them separately and give further explanations.

1. The Responsible for Concluding a Tribute Agreement

Muslim jurists are unanimous on the point that the responsible authority for the conclusion of a Tribute Agreement on behalf of the Islamic society is the authorised ruler of Muslims or his deputy and representative. As drawing up such a treaty is related solely to the high interests of Islam and public benefits of the Islamic society, therefore signing it is outside the responsibility of ordinary Muslim individuals, and belongs to the special functions of the ruler in the Islamic government.

Therefore, if an ordinary Muslim tries to conclude a Tribute Agreement, it will have no legal value as a Tribute Agreement, but only as a Temporary Immunity Agreement worth for the person or persons who have been a party to the pact. If they do not negotiate with a competent and responsible Muslim authority for concluding a Tribute Agreement, they will be sent to their desired land under Islamic government protection in accordance with a special law.¹

Owing to the differences that exist between Muslim groups concerning the qualifications of the ruler of the Islamic government, there is also a difference of view among the Islamic jurists related to distinguishing the responsible authority for drawing up a Tribute Agreement.

According to the Shiite belief in the question of Imamate, the responsibility for concluding Tribute Agreements lies with the Imams of the Prophet's household or their special or

¹ The late 'Allamah al-Hilli, in *al-Qawā'id*, in this respect, says: "If it is concluded by a Muslim it will be invalid, even with a single person, but he may not be killed, and is to be returned to his safe place."

general deputies. General deputies who are appointed in the period of the Imam's occultation in accordance with a special order,¹ are the pious, virtuous and chaste jurists who are qualified to judge and issue verdicts.²

But under conditions when there are no adequate possibilities for the competent jurists to assume the positions of rulers, and when the rein of Muslims' affairs is in the hands of unqualified rulers, the Tribute Agreement concluded between such a government and a non-Muslim individual or group, has no legal value and is automatically null and void, if it is contrary to the high interests of Islam and Muslims.³

When the interests of an Islamic society necessitate the conclusion of Tribute Agreements and there is no fully qualified jurist available, every Muslim who is sufficiently versed in the conditions and aspects of legal injunctions concerning the conclusion of Tribute Agreements and is known for being fair, can take up the proposing and signing of the said Agreement. But since in the time of Imam's occultation there is no possibility for jurists (as general deputies of the Imam) to hold the rein of Muslims' affairs in their hands, the Tribute Agreements, like other social and political matters, are in the hands of unqualified rulers, and even in the time of the true and rightful leaders of religion,

¹ 'Umar ibn Hanḍalah, quoting the Imam aṣ-Ṣādiq (A.S.), says: "... Find whoever of you narrates our *ḥadīth*, and considers our *ḥalāl* and *ḥarām* and knows our decrees, let them accept him as an arbiter, as I appointed him as a ruler over you. If he judged according to our judgement and it was not accepted from him, they would be belittling the judgement of Allah and rejecting us, and the one who rejects us is as if one has rejected Allah, and this is equal to associating a partner with Him."

² *Tahrirul Wasilah*, Vol. 1, p. 463.

³ *Ibid.*, p. 466.

unjust rulers and caliphs have acted as rulers and concluded Tribute Agreements with religious minorities, who lived carefree in the Islamic lands. So it has become traditional for Muslims and jurists to respect such Tribute Agreements and to accept the said groups as committed minorities in their own society.

Ash-Shaykh as-Sadūq quotes the Imam ar-Riḍā (A.S.) saying: "The Christians of Bani-Taghlib refused to pay tribute and asked Umar to exempt them from its payment. 'Umar, fearing that they might join the Roman government, agreed to forego the per-head tribute but to increase other taxes on them." Then the Imam is reported to have said: "The Christians of Bani-Taghlib can act according to this Agreement they have agreed upon, until the day the truth is revealed."¹

The purport of this quotation shows that a Tribute Agreement concluded by an unqualified ruler, too, may be valid and have legal value like that of the Imam's and a rightful ruler.²

The First Martyr says, in his valuable book of *Durūs* [Lessons]: "In the time of the Imam's occulation it is necessary to treat minorities according to the agreement they have concluded with the leaders and the rulers of the Muslims".

The late author of *Jawāhirul-Kalām* [Gems of Speech], too, says on the basis of the said tradition: "The purport of this tradition means that the Tribute Agreement of the unjust rulers is to be considered correct and valid, and this verdict also applies to cases lacking the basic conditions of a Tribute

¹ *Wasā'ilush-Shi'ah*, Ch. 68, *jihād*, *ḥadīth* No. 6.

² *Jawāhirul Kalām*, Vol. 21, p. 263.

Agreement, namely the payment of tribute.¹

Thus, if it is seen that some jurists consider the Imam and his special or general deputy as the only authority competent for concluding Tribute Agreements, this is applicable to conditions when the required possibilities exist for the rule of the qualified leaders, and not that the said agreement should be concluded by the Imam or his deputies under all conditions such that the other Tribute Agreements would be null and void.

The same author, after confirming the above point, says: "The fact is that the agreements concluded by unqualified rulers have the same value and validity as those of a just person, and the poll-tax received are legitimate and acceptable, but I have not come across this point in the analysis of jurists."²

Therefore the steps taken by Muslim rulers and governments in concluding international agreements are included in the legal consequence of the law related to the undertakings the just believers in the *hisbiyyah* affairs³ according to which they are considered legally valid by all Muslims.

2. Committed Allies

Non-Muslims can become committed allies of the Muslims through the law of tribute agreements, and these include three groups of Jews, Christians and Zoroastrians who are called in

¹ *Ibid.*, p. 276.

² *Ibid.*, p. 263.

³ *Hisbiyyah* affairs are a series of duties of particular importance, and due to their necessary interests, they are entrusted to the religious authority, and, in case of his absence or unavailability, other righteous and equitable persons may undertake to carry them out.

the Islamic Jurisprudence "*Ahlul Kitāb*" [The people of the Book]. This denomination is due to the fact that heavenly Books were sent down upon Moses, Christ and Zoroaster and have been recognised by Islam.

It is true that the followers of the said three faiths have lost the heavenly books of their Prophets and follow books which have been altered by profit-seeking pseudo-clergy and are devoid of the authentic facts and truths of the relevant creeds, but according to the law of Islam concerning the propriety of benefitting from the legal advantages of Tribute Agreements, it is sufficient for an individual or group to introduce themselves as followers of one of the above creeds to be recognised as such without further evidence.¹

In spite of the Muslim jurists' unanimity concerning the competence of the Jews, Christians and Zoroastrians in benefitting from the law of Tribute Agreements, some *Sunni* jurists² have expressed doubt that the Zoroastrians belong to the group having a heavenly book. They rely on the utterance of the Prophet, saying: "Treat the Zoroastrians as you treat those with heavenly books."³

Shi'a jurists unanimously and on the basis of Islamic evidence⁴ consider the Zoroastrians as belonging to the groups with heavenly Books. They believe that this creed was announced by a person selected and sent with a heavenly Book to guide the human beings.

¹ *Jawāhirul Kalam*, Vol. 21, p. 235.

² At-Tirmidhi's *al-Jami'*, Vol. 2, p. 392. Al-Bayhaqi's *Sunan*, Vol. 9, p. 189. *Atharul Jarb*, p. 717.

³ The Messenger of Allah (S.A.) was quoted to have said: "Treat them as you treat *ahlul Kitāb*." *Jawāhirul Kalam*, Vol. 21, p. 230.

⁴ *Wasailushi'ah*, Vol. 11, ch. 49, *Jihad*.

In one of these Islamic documents it is affirmed that the Zoroastrians had a prophet whom they killed, and their heavenly Books was written on twelve thousand cow-hide which was burnt by his followers.¹

Concerning the aptness of non-Muslim groups who are not included in the groups with heavenly Books, jurists have expressed different views. These groups are as follows:

1. The atheists and those who believe in no religion, doubt it or deny religious beliefs.
2. The polytheists and those who assume partners and equals for the Creator of the universe and the real worshipped one.
3. The followers of artificial and false creeds which lack every true origin, that have been created merely by the untrue allegations of false prophets.
4. The groups who consider themselves the followers of one of the prophets mentioned in the Qur'ān other than the Jews, the Christians and the Zoroastrians, such as the followers of the Books of Abraham Seth and Idris or the Zabur of David.

Some of the Sunni jurists consider all the said groups as being apt, like those with heavenly Books, for benefitting from Tribute Agreements, while some others have excepted the polytheists of the Arabian Peninsula and other Arab polytheists. Another group consider that concluding Tribute Agreements is exclusively to be with *ahlul kitāb*.

Shiite jurists attribute this privilege only to *ahlul*

¹ Ibid.

kitāb too. Namely, the Jews, the Christians and the Zoroastrians who may join the alliance treaty (Tribute).

The late scholar al-Ḥilli says in *Tadhkiratul-Fuqahā'*:

"With the exception of the Jews, the Christians and the Zoroastrians, no Tribute Agreement may be concluded. The only thing that can permit their admittance to the Islamic society is adopting Islam, even if they consider themselves followers of a heavenly book like those of Abraham, Adam, Seth, Idris or the Zabur of David. This is one of the two dictums of ash-Shāfi'i about this matter, since these books are not considered among the books which have been descended from heaven, but they have been sent as revelations to the Prophets. Moreover, they consist of a series of sermons and include no laws or verdicts. The second view of ash-Shafi'i is that the proposal of agreement and tribute may be accepted from the said groups on the basis of the Qur'an's verse, saying:

مِنَ الَّذِينَ أُوتُوا الْكِتَابَ

"Out of those who have been given the Book." (*Sūratut-Tawbah/29*)

But the definite article 'the' in 'the Book' conveys the sense of promise and this is specially related to the three groups of the Jews, the Christians and the Zoroastrians."¹

According to this view there is no difference between Arabs and non-Arabs, and the only measure of aptness for a Tribute Agreement is belief and creed. The late Shaykh Ṭusi

¹ *Tadhkiratul Fuqahā'*, *Kitabul jihād*, Ch. 5, question 5.

in his book, *al-Mabsūt* explicitly states this point:

“Unbelievers (non-Muslims) are two groups: Those who are apt for a Tribute Agreement, and those from whom this Agreement is not acceptable. The first group includes the Jews, the Christians and the Zoroastrians, and the second group includes the followers of other creeds such as idolaters, star-worshippers, Sabians or else, whether Arabs or non-Arabs, from whom no such Agreement is acceptable whereas from the first group it is acceptable, Arabs or non-Arabs.¹

To prove the view concerning the aptness of the groups of *ahlul kitāb* for the Tribute Agreement (Jews, Christians and Zoroastrians) the following arguments may be resorted to:

1. The view of the whole of Shiite jurists who have unanimously supported the above point.

2. Verse 29 of *Sūratul-Barā'ah* which makes the termination of the state of war conditional on concluding a Tribute Agreement with the groups of *ahlul Kitāb*. Thus the legalisation of a Tribute Agreement with them necessitates its illegality in other cases. On this basis to prove the claim related to the said verse has no need of interpreting the sense of the verse in order to discuss its meaning.²

3. The annexation of the Zoroastrians to the groups of *ahlul Kitāb* as being apt for Tribute Agreements, as stated in some Sunni³ and Shiite⁴ narratives, shows that the legal

¹ *al-Mabūt*, Vol. 2, p. 36. *Jawahirul Kalām*, Vol. 21, pp. 234-5.

² The author of *Alhārul Harb*, thinking that citing the above *āyah* is only possible through its conception, discussed it and claimed that mentioning *ahlul Kitāb* in the said *āyah* was because at the time of its revelation the non-Muslims facing the Muslims were only *ahlul Kitāb*.

³ Al-Bayhaqi's *Sunan*, Vol. 9, p. 189.

value of concluding Tribute Agreements is legitimate only in the case of groups of *Ahlul Kitāb*, otherwise there would have been no need to annex the Zoroastrians to them.

4. The late Koleini says in *al-Kāfi* that the Imam aṣ-Ṣādiq was asked about the Zoroastrians: "Have they had a prophet?" The Imam answered: "Yes. Do you not know of the letter sent the Prophet to the Meccans? In that letter the Meccans were invited to Islam and were warned that they must face war if they refused. The people of Mecca offered in answer to pay tribute in order to be free in their worship. The prophet wrote in answer:

"I accept tribute only from *ahlul Kitāb*. The Meccans supposing that there was a contradiction in the prophet's words, wrote: "You claim that you accept tribute from none but *ahlul Kitāb*, while you have accepted it from the Zoroastrians of Hajar." In answer the Prophet wrote: "The Zoroastrians have a prophet whom they killed and burnt the heavenly book which had descended upon them. Their prophet had presented their heavenly book to them written on twelve thousand cow-hides."¹

In this narration the aptness of *ahlul Kitāb* for Tribute Agreements has explicitly been mentioned, while other groups have been deprived of the right of benefitting from the legal advantages of Tribute Agreements.

Some jurists, relying on a narration which will be quoted below, have negated that the legitimacy of the Tribute Agreement covers only Arab polytheists, and have considered *ahlul Kitāb* as a privileged group to benefit from the law

⁴ *Wasā'ilush-Shi'ah, Kitābul jihah*, ch. 49.

¹ *Furu'ul Kāfi*, Vol. 1, p. 161

of concluding Tribute Agreements.

Abu-Basir says: I asked the Imam aṣ-Ṣādiq (A.S.) about the tribute and he answered: "Allah has forbidden taking tribute from the Arab polytheists."¹

انما حرم الله الجزية على مشركى العرب

(The word 'ennama' (in this quotation) in the Arabic language gives the sense of restriction. Therefore, on that account, the prohibition of the tribute in the case of other than the Arab polytheists and idolaters is negated. In connection with the above noble verse, it must be said that stating *ahlul Kitāb* is due to the fact that they are privileged groups, or that the word "من" (out of) in the verse refers to:

لا يد ينون دين الحق

"They do not believe in the true religion" (*Sūratut-Tawbah/29*) and that conjunction of this sentence and the sentence:

لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ

"... Who do not believe in Allah nor in the After Day" as a kind of conjunction of the special to the (same verse above) general.

A more careful scrutiny of the sense of the above narration, however, shows the inexactitude of this reasoning, for,

¹ *Waa'ilush-Shi'ah, al-jihad*, ch. 49.

the question which the Imam was asked, was related to the Zoroastrians, and for the people of that time the Zoroastrians were non-Arab Polytheists in the same way that the idolaters of the Arabian peninsula were Arab polytheists. Consequently the sense of restriction, which is obtained from the word 'ennama' is related to the Zoroastrians and non-Arab polytheists, and such a case is usually termed 'additional limitation.'

Concerning this verse, too, if well thought over, it is clear that the conjunction of sentences, as explicative apposition, is to explain the word «الذِينَ» "those" which stated of beginning of the verse.

A study of the View of the Sunni Jurisprudents

Most Sunni jurisprudents such as the Owza'i the Thawri and the Māliki, concerning the aptness of the Tribute Agreements, are of the opinion that all non-Muslim groups from any religion, sect and tribe can participate in concluding such agreements and become committed allies of the Islamic society and benefit from all its legal advantages. They have given two reasons to prove their theory:

1. Buraydah says: It was the Prophet's habit — when he entrusted the command of the Muslims to someone or despatched irregular troops, while making special recommendations to them and other Muslims and inviting them to observe chastity and to fear Allah he instructed them on facing pagan enemies to make the three following proposals to them, and if they accepted any of them, then the Muslims should abstain from fighting them. The proposals were: Firstly, invite

them to Islam, and if they refuse, then offer them peace on the basis of a Tribute Agreement. In case of accepting it, you should abstain from all hostilities to them. And lastly if they refuse this offer of peace, ask Allah's help and prepare for war.¹

According to this narration, the proposal of peace through Tribute Agreements is not only legitimate but also obligatory in respect of any pagan enemy, and for this reason there is no difference between *ahlul Kitāb* and the polytheists.²

2. The joining of the Zoroastrians to *ahlul Kitāb*, as mentioned in some narrations, is an evidence that the tribute peace treaty is not limited to *ahlul Kitāb*, since the Zoroastrians are included in the said agreement inspite of not being of *ahlul Kitāb*.

The reason why the Zoroastrians are not considered of *ahlul Kitāb* is a narration in which they are placed on an equal basis with the groups having divine books in their aptness for concluding Tribute Agreements, a narration which is attributed to the Prophet,³ denoting that the Zoroastrians do not belong to *ahlul Kitāb*, but that they should be treated in a similar manner.⁴ Treat them as you treat *ahlul Kitāb*.

« سنوا بهم سنة اهل الكتاب »

Treat them as you treat ahlul Kitāb.

This is an evidence that the Zoroastrians were not of *ahlul*

¹ *Sabilus-Salam*, Vol. 4, p. 46.

² *Alhāruḥ Ḥarb*, pp. 722-3.

³ Al-Bayhaqi's *Sunan*, Vol. 9, p. 189.

⁴ *Ibid.*

Kitāb, but they were to be treated according to the law with which *ahlul Kitāb* were treated.¹

In the above narration, the basic evidence is the theory of the universality of the law of Tribute Agreements, according to which the said Sunni jurists have affirmed the theory.

Disregarding the discussion about the authenticity of these two narrations, an investigation into their purports shows the obvious weakness of the above reasoning. In other words, in the first narration, Buraydah repeated what the Prophet had said and it is not clear in those cases to which group the Muslim troops were dispatched enabling the Prophet to refer to them as pagan enemies. These enemies may easily have been the Zoroastrians who, as we said before, used to be called non-Arab polytheists.

Moreover, Buraydah's narration, according to the reminder of the narrators, belongs to a time after the descent of the verse 29 of *Sūratul Barā'ah* concerning peace treaty of tribute,² which verse descended after the conquest of Mecca and the surrender of the pagans. Therefore what is meant by pagan enemies mentioned in the tradition, cannot be Arab pagans, and non-Arab pagans means the Zoroastrians who were considered as of *ahlul Kitāb*.

Concerning the second narration, it must be said that the phrasing of the narration is no evidence for negating the Book for the Zoroastrians. It rather means that they are on an equal footing with other groups having books. Moreover, the

¹ Al-Bayhaqi's *Sunan*, Vol. 9, p. 189.

² *Subulus-Salam*, Vol. 4, p. 47.

explicitness of other narrations¹ including the Zoroastrians with the groups having Books, removes the ground for the above probability altogether.

Correction of an Error

The exclusiveness of the Tribute Agreement to the three groups of the Jews, the Christians and the Zoroastrians does not signify that the conclusion of peace treaties in the Islamic law is not legitimate with other groups, since in the Islamic jurisprudence, the establishment of peace is envisaged by means of various agreements each of which may be concluded in certain cases in accordance with a special law.

The Tribute Agreement is one of such peace treaties which has special conditions and a definite law in the Islamic law, according to which the said agreement is envisaged for groups with heavenly Books and has legal value only for them.

In the case of other groups there are other peace treaties with certain laws and conditions on the basis of which the Islamic society and non-Muslims can conclude peace agreements and live in full security and tranquility.²

Priority of the Followers of Heavenly Books

In view of the nature of the Tribute Agreement and its legal vestiges, the advantages and special superiority given by Islam to the followers of heavenly books become clear.

¹ Al-Bayhaqi's *Sunan*, Vol. 9, p. 189.

² This will be further discussed in the coming chapters.

We have already said that this agreement does not only allow these groups to reside in all Islamic lands, but also considers them as citizens and members of the great Islamic Ummah and society and as internal allied elements.

This privilege and superiority is due to the fact that Islam, by declaring the natural freedom of belief,¹ attaches a great importance to individual and social ideology and evaluates human personality on the basis of faith and belief. Thus the legal and human work of a person and society is determined in proportion to the value of their ideological principles, and in this evaluation, no attention is paid to apparent differences such as blood, colour, racial precedence and tribal originality and honour.

Therefore, an individual and a society, declaring themselves as followers of a belief which is recognised by Islam as a holy heavenly creed, must be regarded differently from the viewpoint of respect, legal personality and human worth, as compared with a society and individuals who follow baseless and wrong beliefs and lack a proper origin and foundation worthy of human position.

Islam recognises the religions of Moses, Christ and Zoroaster as three holy heavenly creeds announced to the human society by the above prophets on behalf of the Creator of the universe. But it believes that none of the said creeds possessed an eternal aspect, and they had successively been abolished until with the universal call of Islam, Christianity, too, which in its own time was in its ideological evolutionary stage, was abrogated.

¹ Re: *ayah* 257 of *sūratul Baqarah*.

Owing to the special respect that Islam has for the great divine Prophets, it naturally feels respect, too, for the individuals and groups who declare themselves followers of these exalted prophets, even though they may go to excess in their claims and disregard true faiths.¹

This respect, which is in fact a respect for the genuine ideology of their prophets, has resulted in their benefiting from special legal privileges and priorities in the Islamic jurisprudence, an example of which is seen in the law of the Tribute Agreement.

This kind of evaluation and granting legal privileges is a peculiarity of the Islamic law, an example of which may not be found in any other legal system even the communist countries which represent a single camp, regard the communist individuals of other communist countries as aliens and foreigners, and so long as they have not become citizens of that country, they are not admitted as allied members of the communist society of the country.

The privileges enjoyed by groups with heavenly books through the law of the Tribute Agreement in the Islamic society are another evidence of the general peaceful policy of Islam and a true witness to the respect and value that Islam has for human beings, their thoughts and ideologies.

¹ This is true of the three groups. The religions which are now followed by the Zoroastrians (fire worshippers), the Jews and the Christians are nothing but a handful of legends fabricated by the fancies of a number of the pseudo-men of religion. Their original heavenly book had been distorted and their real beliefs and precepts have for long left them.

The Text of the Tribute Agreement

The text of the Tribute Agreement, like every other legitimate pact, is based on the agreement of both parties, on the proposal of one side and acceptance of the other.

A survey of the Tribute Agreements concluded by the Prophet of Islam with various groups of *ahlul Kitāb* will show the actual form in which they were formulated.

These texts usually began with the name of Allah, followed by the names of the official representatives of both contracting parties. Then, after inserting the articles and conditions agreed upon, it was signed at the bottom by a number of witnesses.

In drawing up these agreements they tried to state the purposes of both sides explicitly and without any ambiguity and possibility of alteration of its purport. So the phraseology and style were usually very simple.

The text of the agreement concluded between the Prophet and Christians of Sinai, in the handwriting of the Imam Ali, went as follows:

“In the name of Allah, the Beneficent, the Merciful. This is a letter written by Muhammad son of Abdullah, as a bearer of good news and a warner, and, in respect of Allah’s trust, entrusted with all creatures, so that no plea would be made to Allah after the prophets. Allah, almighty, is Wise.

He has written this to those who follow his faith as a treaty with the groups of the east and west who are Christians, be they near or far, Arab or non-Arab, known or unknown. This is a writ according to which a treaty is concluded with them, and whoever opposes its articles will be considered a transgressor to him and other Muslims. Such a person would be rejecting Allah’s promise not being honest nor humble in his agreement, ridicule his own religion and so deserving damnation, be he a king or an ordinary Muslim believer.

Wherever monks or travellers get together, and reside in the mountains or in the deserts, in inhabited places or in plane, in synagogues or temples, we will be behind them to preserve and protect them, and I will defend their lives, property and goods with my life and that of my friends, helpers and nation, since they are my subjects and united allies.

With the exception of what they willingly pay as tribute they will by no means be compelled to pay anything more or held responsible for it.

Their judges, monks, hermits and travellers will not be molested, and no synagogue or church will be destroyed and nothing of their property may enter the Muslims’ dwellings.

Judges and monks are exempt from paying tribute, so are those engaged in the task of worship.

“The wealthy and men of commerce should not be required to pay anything in excess of their tribute.

"None of them will be forced to fight or carry arms.

"Rather the Muslims should defend them, and converse with them in the best manner and according to the holy verse which says:

وَلَا تُجَادِلُوا أَهْلَ الْكِتَابِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ

'Do not argue with ahlul Kitāb except in the best manner.'
sūratul 'Ankabūt/46)

They may live in a safe environment which is full of kindness, and everything is to be done to check what may cause them annoyance and uneasiness, wherever they may be and wherever they may reside."

"This agreement is signed by the Holy Prophet, and undersigned by a number of his friends as witnesses.¹

The following treaty, too, was concluded between the Prophet and Yuhanna son of Rubah chief of the Christians of Ila (al-Aqabah) :

"In the name of Allah, the Beneficent, the Merciful.

This is a guarantee on behalf of Allah and Muhammad, his Messenger given to Yūhanna-son of Ru'bah, chief of the Christians of Ila (al-'Aqabah): "In the name of Allah, the Beneficent, the Merciful. This is a guarantee on behalf of Allah and Muhammad, his Messenger given to Yuhannā-son of-Ru'bah, and the people of Ila, according to which their ships and travellers are under the protection and security of Allah and His Messenger, and all their companions from ash-Shām, Syria or on the coasts of the sea are immune and under protection.

¹ Ibn Hishām's *Sirah*, Vol. 2, p. 902.

Elements causing incidents will never be exempted from trial because of their wealth, and if they are captured they will be considered as slaves.

It is forbidden to prevent access to water-springs to them (People of Ila) or bar them from proceeding on their way either by land or at sea.

This treaty is written by Juhayn son of aṣ-Ṣalt Serjil son of Hasnah with the permission of the Messenger of Allah."

Some of the agreements concluded by the Prophet with *ahlul Kitāb* contained a number of conditions and particular obligations which were stipulated in the text of the agreement according to the circumstances of the time and the existing expediencies, none of which ever went beyond the limit of justice. The hostility and stubbornness of the other party did not cause indifference to its interests and to the observance of the just criteria.

Al-Balādhuri quotes the following agreement in his book *Fuluhul Buldān* about the people of Najran, as a good example of such treaties:

"In the name of Allah, the Beneficent, the Merciful.

This is a treaty concluded by the Messenger of Allah and the people of Najran. Their agricultural products and property will be protected and the whole will be returned to them. They will pay two thousand suits of clothes annually, one thousand of which must be delivered in the month of Ramaḍān, and the other thousand in the month of Safar. If there is an increase or decrease of crops, they will be evaluated according to measure. Other products of theirs such as war garments, horses, livestock and other war equipment will be received on the basis of calculation.

The people of Najran undertake to host the envoys of the Messenger of Allah for a month or less, but not more than one month. If a plot is hatched in Yemen, the people of Najran lend thirty war equipment, thirty horses and thirty camels to reinforce the Muslims, and if any of this number is lost or damaged, the Muslims must restore it by paying the equivalent.

Najran and its neighbourhood will be under Allah's protection and will be bound by the pact of Muhammad, the Messenger of Allah, together with its people, its territory, property, the present or the absentees, its travellers, delegates and temples. No change will be made in their conditions, and no rights of theirs will be altered. Their temples remain intact, and their bishops, monks and church adherents as well as what they possess will not be molested, and no imposition will be made on them. They are exempt from the blood money of the pre-Islamic period. They will not be called to account nor are they required to pay one-tenth tax. Their territory will not be occupied by Muslim troops. Those who appeal for justice will be treated with equity and justice. In Najran, there will remain no oppressor nor oppressed. Those who continue to engage in usury will receive no protection whatever. No person will be held responsible for another person's fault.

"According to this treaty the people of Najran will be protected by Allah and Muhammad, His Messenger till the Day of Judgment, and so long as they do not deviate from the highway of benevolence and peacefulness, no imposition on them and no injustice will be made towards them."¹

¹ *Futūḥul Buldān*, Vol. 1, p. 88.

At the end of this treaty Abu-Sufyān ibn Harb, Ghablān ibn 'Amr, Mālik ibn 'Awf of the tribe of Bani-Nasr, Aqra' ibn Hābiss al-Hanḍali and al-Moghīrah were chosen as witnesses.

According to some documents, its text is in the handwriting of the Imam Ali ibn Abi Ṭalīb.

Chapter Four

Responsibilities of Both Parties

*A Survey of Obligations of the
Minorities in Tribute Agreements*

Chapter Four

Responsibilities of Both Parties

A Survey of Obligations of the Minorities in Tribute Agreements

Conditions and Terms of Tribute Agreements

Responsibilities of Both Sides

In concluding and drawing up the articles of the Tribute Agreement, the freedom of both parties is reserved on the basis of consent and accord as the main pillar of the Agreement. Each side can propose special terms and conditions according to its interests and expediency (except in special cases) to be inserted in the text of the treaty if both sides agree upon them.

Such conditions comprise responsibilities which bind both sides to carry out their duties and at the same time benefit from the rights and privileges envisaged in the Agreement. In this way the duties stipulated for each side become a guaran-

tee of the interests of the other committed side.

For this reason the theory and law of the Tribute Agreement in Islam is one of the fairest and most equitable agreements, in which there is no trace of the superiority of a strong majority over a weak minority. On the contrary, both sides undertake mutual responsibilities at the same level. We may even say that the scale of duties of an Islamic society is much more heavier than that of its allies.

Now we will first describe the conditions regarding the duties of the allies (the tributaries), and then deal with the duties of the Islamic society as well as the rights and privileges of the allies.

In concluding a Tribute Agreement, the freedom and the limits of the powers of the competent Islamic government are within the bounds of the special conditions stipulated in Islamic jurisprudence. The conditions envisaged in Islamic jurisprudence are as follows:

1. Conditions which are necessarily stipulated in the agreement and must be wholly observed.
2. Conditions depending on the circumstances of the agreement, whether they are stipulated in the text or not explicitly stated, all of which must be respected and confirmed by both sides.

Basic Articles of a Tribute Agreement.

The first part is summarized in two articles:

Article One:

The Payment of the tribute, which will be fully discussed in later chapters.

Article Two:

Respect for the Islamic laws, observance of their execution and acceptance of judicial, penal and social verdicts carried out in the Islamic realm on the basis of Islamic criteria.

According to this article, as the Muslims must obey the verdicts issued by the competent Islamic courts, the allies (tributaries), too, must act upon the issued verdicts, when they are tried in these courts.¹

Likewise, whenever a tributary commits an act forbidden in their own religion and condemned in Islam on the basis of special regulations, the said regulations must inevitably be enforced in his case. For example, if a tributary commits adultery or theft which are prohibited in the religions of *ahlul Kitāb*, he will be punished in accordance with the rules of Islamic penance.²

As for the acts forbidden in the Islamic law but permitted in the religion of *ahlul kitāb*, they do not come under the above regulations unless affectation to such deeds is not in accord with the criteria and exigencies of the agreement.

In view of the nature of a Tribute Agreement which is concluded as a treaty of alliance and social solidarity, and participation in a common social life, the necessity of the observance of the above principle becomes evident.

As an Islamic society respects its internal allies, it also recognises their laws and rules in their mutual relations. The philosophy of Tribute Agreements necessitates a reciprocal respect to be shown by the allies to the Islamic social laws, and their abstention from acts forbidden according to the be-

¹ This point will be referred to in later chapters.

² *Jawahirul Kalām*, Vol. 21, p. 318.

liefs of both sides, and an obligation to respect and carry out issued verdicts.

In a big society where tributaries live alongside Muslims, the observance of the above principle is not only an absence of restriction of their freedom, but in view of the rights and privileges which the tributaries enjoy on the basis of this agreement, this is the minimum right of which the criteria of social justice considers the majority members, namely the Muslims, worthy.

Conditions to be Stipulated

The second necessary part of the agreement consists of the following points:

The allies (tributaries) must abstain from every hostile plot and sabotage and military activities against their Muslim confederates.

They must also abstain from giving aid, reinforcement, refuge or protection to the enemies of the Muslims, and must avoid every kind of espionage for the enemies of Islam, or guiding and supporting spies and enemies of the Muslims.

The late Muḥāqiq, in his *Sharāye'*, the Allāmah al-Hillī in *Tadhkiratul-Fuqahā'*, and ash-Shahid ath-Thānī in *al-Masālik*, have considered the acts of espionage of tributaries and supporting envoy spies a violation of the agreement on the condition that these matters are stipulated in the text of the agreement. But in view of the role of espionage and hostile acts, it can be said that such a condition becomes willy-nilly a part of a precondition stipulation to the effect that the tributaries should refrain from hostile acts, plots of supporting the enemies against the Muslims. Most jurists, in-

cluding the above three renowned scholars, have considered it necessary to stipulate the said conditions such that the violation of which would render the agreement null and void.

It is, however, affirmed by some jurists that there is no need to stipulate the said points in the agreement since they are implied in the treaty, and in any case, whether they are stipulated in the text or not, whenever the said conditions are violated, it would mean the violation of the treaty itself. Thus, this condition may be considered as the third necessary article of a Tribute Agreement.

The late scholar al-Hilli explains this point as follows in his *Tadhkirat-ul-Fuqahā'*:

"The second part of the conditions of a Tribute Agreement includes matters which are not obligatory to stipulate in the text of the agreement, but the acceptance and exigency of the treaty make their execution obligatory. Such a condition includes the abstention of the tributaries from acts which are contrary to the treaty and to the asylum granted by the Muslims, such as deciding to fight the Muslims, supporting the pagans and aiding them in their fight against the Muslims, if they commit such hostile acts, the Muslims must retaliate, and this is incompatible with the agreement."

Then, referring to the first part of the tribute conditions, he says: "If these two conditions of the Tribute Agreement are not observed, it would be tantamount to the violation of the treaty, whether they are stipulated in the text of the treaty or not."

Compatible Conditions

In addition to the above conditions, any other condition or

article which may create a responsibility for the tributaries depends upon the expediency of both sides and discretion of the competent Islamic government. The agreement may even take the form of a simple peace treaty (comprising the said points and conditions) without any other reservations which may involve duties for the allies.

Here it should be pointed that the jurists have recommended on the basis of certain Islamic proofs and high interests of the Muslim society, that several conditions could be added to the articles of the agreement and its text. Although such conditions are not counted as impositions on the tributary allies, yet, they are requisites for solidarity of peace, coexistence and good will towards the joint agreement. In fact they represent a reciprocal respect which is necessitated by the spirit of the treaty of alliance and formation of a single society.

Some of these conditions are stated by the late scholar al-Hilli in his *Tadhkirat-ul-Fuqahā'* as follows:

"The third part of the articles in the text of the Tribute Agreement are conditions suitable for insertion in the agreement. They are related to matters which must be avoided by the allies (tributaries), and are briefly stated below:

1. Avoiding illegitimate sexual intercourse with the Muslim women
2. Abstention from proposal of marriage with the Muslim women.
3. Avoidance of any propagating activity which might deviate the Muslims from their Islamic convictions.
4. Abstention from robbery and molestation of the Muslim

travellers on high ways.

5. Refusal of giving refuge and protection to enemy's spies.

6. Refusal of aiding espionage activities of the enemies of Islam against the Muslims, or guiding them in this respect, or communicating news related to the Muslims or sending letters to the enemies of Islam and refrain from divulging the secrets of the Muslims to them.

7. Abstaining from acts of terror and attempt on the lives of the Muslim men and women.

Elsewhere he writes in the same book: "It would be fitting for the leader of the Muslims to stipulate in the Tribute Agreement whatever is in the interests and exaltation of the Muslims."

The late Ibn-Junayd, a Shiite jurist, says: "It should also be stipulated in the text of a Tributary Agreement that the allies (tributaries) are to abstain from apparently abusing our Prophet and every other Prophet and angel, as well as every Muslim.¹

Concerning heavenly religions, whether Islam or other divine faiths, they must not speak evil of them or slander them and avoid flagrant and unworthy acts of anti-religious nature.

The late Muḥaqqiq adds the following article which may be added, according to special circumstances to the text:

"The allies' dwellings should not be built higher than nor-

¹ If such a crime is proved in the Islamic courts to have been committed against dhimmi(s), and it had been stated in the text of the tribute agreement, it will be regarded as violating the agreement. If it is not stated in the agreement, the criminals will be tried and sentenced according to the Islamic penal code.

mal.”

Obviously is article, like other previous recommendations, can be binding if it is stipulated in the text of the agreement with the consent of both parties and their signatures.

As the allies are not obliged to pay any voluntary monetary contribution for any purpose, even if the allies feel they must do so, it is invalid,¹ and so is any other condition in this connection. Therefore the jurists have excepted only a single case of this law, and that is in order to follow the example of the Prophet of Islam.² They say: “In case of expediency, it may be stipulated in the text of the agreement that the allies should act as hosts to the Muslims when they or the Muslim Mujahids pass through their quarters.”

Some jurists think that the expenditures for such entertainments should be paid out of the tribute, but most jurists affirm that the condition for entertainment should be added to the minimum sum of the tribute, since it is possible that no Muslim may pass through their quarters, in which case their Tribute Agreement will lose its financial aspect, and will thus lose its legal value willy-nilly on ac-

¹ In *al-Wasā'il* it is said, on the authority of Muḥammad Ibn Mushim, quoting the Imām al-Baqir (A.S.), concerning the tributaries, asked whether it can be levied from them on their properties and cattle, other than the tributary, he said: “No.” A similar *ḥadīth* is related by ash-Shaykh al-Mufid, in his *al-Muqni'ah*, quoting Muḥammad ibn Mushim. Look up *Wasā'ilush-Shi'ah*, Vol. 11, ch. 68 of Kitābul Jihāh.

² In the tribute agreement concluded by the Messenger of Islam with Christians of Najrān, there was stated that the people of Najrān must be the hosts of the envoys of the Messenger for a month or less. According to Shaykh Ṭūsī in *al-Mabsūt*, it was stated in the tribute agreement with the people of Iylah that they must be the hosts of the Muslims passing through their land, for three days.

count of the non-payment of tribute. This view is supported by the fact that in the agreements with the peoples of Ila and Najran, the Prophet had not only stipulated the minimum of tribute sum, but had also made it an obligation for them to entertain the Muslim travellers and official envoys.¹

Obviously if the allies refuse to undertake such a duty, there will be no obligation on them,² but if in the Tribute Agreement they accept such an obligation, its manner and duration must be stipulated.

In addition to the above points, Shaykh-e-Tusi thinks it necessary to determine the number of the persons who are to be entertained by the allies, since every agreement should be clear and definite in all aspects,³ and if the dwellings of rich allies do not accommodate additional persons, the Muslims, to whom this article applies, may stay in the houses of the allies who are not so well-to-do, but the latter have no obligation to entertain their Muslims guests.⁴

Illegitimate Conditions

The proposal of the conditions and articles of the Tribute Agreement, both qualitatively and quantitatively, depends on the view and interests of the competent Islamic government. Naturally these interests vary in connection with the exigencies of time and other special conditions related to the needs of the Islamic society.

Therefore the said conditions which have been recommended by some jurists depend on the above princi-

¹ *Al-Mabṣūt*, Vol. 2, p. 38, *Tadhkiratul Fuqaha*, Vol. 1, p. 441.

² *Ibid.*

³ *Al-Mabṣūt*, Vol. 2, p. 39.

⁴ *Ibid.*

ple. There may happen to exist other conditions which are more urgent to be added, or some conditions to be disregarded in the text of the agreement owing to special circumstances, or the sensitiveness or absence of religious fanaticism of the allies.

In short, the duties stipulated in a Tribute Agreement for tributary allies depend on the interests of the Islamic society and the view and judgement of the responsible Islamic society and the view and judgement of the responsible Islamic authority, as well as on the free commitment and consent of the allies. But in spite of the originality of these two foundations, in some cases it is forbidden to bind tributary allies to some duties and commitments, even if they show consent in accepting them, and an agreement based on such undertakings has no-legal value.

The Law of Tribute Agreements says in this connection:

1. It is not permissible to exact a sum above the tribute mentioned in the agreement from the allies, and any commitment stipulated in the agreement in this connection has no validity and is null and void.

Even if a tax is envisaged on the lands occupied by them, they will be exempt from the payment of the tribute. Similarly if they pay the tribute, no tax must be levied on their lands.

Muhammad-ibn-Muslim says: "I asked the Imam: 'What obligations the tributaries shall have in return for the immunity and security which they enjoy within the Islamic society?' He answered: 'They must pay the tribute, and if the tribute is taken per head from them, they are exempt from land tax, whereas if they pay land tax, they need not pay

tribute."¹

Moreover, the Islamic government cannot demand any other tax from them such as income tax etc., and if such an obligation is stipulated in the agreement, it is not binding at all.

Muhammad ibn-Muslim says: "I asked the aṣ-Ṣādiq about the tribute and what payments must the tributaries make, he answered: 'Their responsibility is limited to the amount they have willingly agreed upon, and a Muslim leader cannot demand anything beyond the tribute, and if this tribute is received per head, then the tributaries need not pay any tax on their property, but if the tribute is levied on their property, then they are exempt from per head tribute.'²

2. The financial obligation (tribute) which is stipulated in the Tribute Agreement must be equitable and proportionate to the allies' financial conditions. It is forbidden to demand any payment above their financial ability. Likewise, that there is no financial obligation on women, children and *lunatics* (and all those who are exempt from paying the tribute in the Tribute Agreement. This point will be fully discussed in the chapter related to tribute.

3. With the conclusion of the Tribute Agreement, the Islamic society and competent Islamic government undertake certain responsibilities (which will be discussed later), violating or neglecting which by the Islamic government would mean a breach of agreement by the responsible Islamic authority.

¹ *Wasā'ilush-Shi'ah*, Vol. 11, ch. 68, *hadith* No. 3.

² *Ibid.*, *hadith* No. 2.

Therefore any term or condition which is added against the allies for the purpose of disregarding or neglecting the articles of the agreement, is null and void.

4. If the Muslims fail to carry out the duties which they have undertaken in accordance with the agreement, the allies will in their turn have no responsibility, and their obligations which are based on the Tribute Agreement will not be binding, and if they had paid any tribute to a responsible Islamic authority, it must be returned to them.

5. In view of the philosophy of the law of Tribute Agreement and in view of the fact that the purpose of the said law is to grant the right of freedom and internal independence as well as the possibility of a common life and social and political alliance in the case of the followers of heavenly books (namely the Jews, the Christians and the Zoroastrians), obviously any conditions and commitments which do away with the possibility of common life for them or impose intolerable restrictions depriving them of repose and tranquility, are automatically null and void, since such conditions are contrary to the nature of the Tribute Agreements and their envisaged consequences to the original divine laws.

Financial Undertaking in the Tribute Agreement

The Tribute¹

The tribute [*jizyah*] is a type of financial undertaking by the allies [*dhimmis*] in return for Muslim commitments. As Muslim citizens act upon their social and religious duties by the payment of established taxes and by participation in military and defence duties for the purpose of the management and defence of their united great society composed of Muslims and non-Muslims, the allies (non-Muslim citizens), too, who benefit from the rights and privileges of such a guaranteed society, must pay a special and trifling tax as tribute to the responsible Islamic government instead of the regular taxes, defence and military duties (undertaken by the Muslims).

The tribute, which is levied on non-Muslim allies, contrary

¹ Our discussion in respect of *jizyah* refers only to the legal aspect. As regards its historical aspect, it is out of our concern. But in the first part of this series, the discussions concerning this topic have been issued in a separate book under the title "*Islam and Peaceful Co-existence*", in which the history of the *jizyah* has been related in detail.

to the supposition of self-interested or ignorant people, has never been a kind of punishment for non-conversion to Islam. It is not a kind of imposition or toll which the victors force the vanquished to pay. This fact can be seen by paying attention to the three following principles on which the system of Tribute Agreements is based:

1. The principle of reciprocal consent.
2. The smallness of the amount of the tribute, and consideration for the minimum financial ability of the allies (non-Muslim citizens).
3. The exemption of the allies from all kinds of financial, military and defensive duties in the united Islamic society.

It is clear that every organised society is in need of a regular budget in order to be able to meet its required expenditure for continuing its life and managing its affairs, order and various relationships, as well as providing the government with the possibility to establish order, enact the laws, and maintain military and defensive forces.

A considerable part of this budget must be provided through the taxes paid by the members of this society, and these taxes are levied in proportion to the financial ability of each individual and the benefits he receives from social privileges, and then the duties of every individual is determined.

In the great and united Islamic society, in which the non-Muslim citizens (*ahlul kitab*) are considered as its members according to the Tribute Agreement, the Muslims pay their taxes in the form of *zakāt*, atonements, *khums* to the competent Islamic government. The only tax that the allies

(dhimmis) are obliged to pay according to the mutual agreement is the tribute which is levied in the way which will be explained later.

By paying the tribute, the allies become exempt from all financial obligations, taxes, military and defence duties. As we said before, if the Muslims fail to perform their obligations, their allies will be exempted from the payment of the tribute, and if this tax has already been paid to the responsible Islamic authority wholly or partly, it must be paid back to them.

In this case, too, the Islamic law exhibits its brilliant humane visage and social equity, and places all measures of social, political and economic aspects within the framework of human values.

Does the Payment of Tribute Mean Abjectness?

The system of financial obligation was common, before Islam, among various nations, such as the Israelites, the Greeks, the Romans, the people of Asia Minor and the Iranians with regards to the minorities dominated by them. It is said that Anowshirwan, the Sassanid king of Iran, was the first to draw up special regulations for it and enforced it in the sixth century A.D. According to some historians, the *jizyah*, meaning 'tribute' or 'poll-tax', is the Arabicized form of 'Gezyat' which was used by the Iranians meaning the minorities financial obligations.¹

History shows that the application of this system on alien

¹ Shaykh Shibli an-Nu'mani has done some researches in this respect, supported with evidences. *Al-Manâr*, Vol. 10, p. 291.

minorities, or weak and defeated nations, was a sign of victory, power and superiority of the great and powerful governments, and was considered a kind of tax-collection and exploitation.

But, while putting its signature to this system, Islam presented it in such a form which, besides showing no sign of compulsion, pretentious superiority or exploitation, as it formerly used to show, not to be seen in the Islamic *jizyah* system, it rather represents the most equitable way for peace, solidarity and coexistence.

But that same apparent similarity between the two systems has led some ill-motive or ignorant people to consider the Tribute Agreement as a form of exploitation without paying attention to the conditions and special consequences of the Islamic *Jizyah* system.

The explanations given by some commentators about the verse No. 29 of *sūratul-Tawbah* have not been without influence in creating the above error which was utilized by malicious people, and a means of deviation for the little informed people.

Now we will first state what those commentators had said about the above verse, and then we will explain what other great jurists and commentators have declared about it.

The law of the Tribute Agreement mentioned in the Qur'an is as follows:

فَقَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا يَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ
 اللَّهُ وَرَسُولُهُ وَلَا يَدِينُوا دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ
 حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

"Fight those who do not believe in Allah, nor in the Last

Day, nor do they prohibit what Allah and His Messenger have prohibited, nor follow the religion of truth, out of those who have been given the Book, until they pay the tribute handed (to you) in submission. (Sūratul-Tawbah / 29)

The law of the Tribute Agreement was enforced for the first time upon the people of Najran on the descent of this verse in the eighth or, as some say, in the ninth year after the Migration.

In interpreting this verse, some have supposed that it implies a declaration of war on all those who have been given the Book (the Jews, the Christians and the Zoroastrians) and this war must go on until the result mentioned at the end of the verse is secured. The ultimate consequence of the war for these groups is to live in abjectness and misery and pay tribute.

They have also expressed views concerning this state of the tributaries, such as the following:

1. The tributaries are dragged abjectly and forcefully to the tax-collectors' office to pay the tribute.
2. The tribute is taken from the tributaries while the latter are standing and the tax-collectors are sitting.
3. The tributaries are insulted and beaten at the time of payment.
4. The tributaries are forced to stand in the sun at the time of payment.
5. The tributary is to bend his head, and the recipient takes hold of the tributary's beard and gives him a blow on

the head.

This strange view is attributed to ash-Shāfi'i.

Studying the *āyah* on the *Jizyah*

Although the extravagant views mentioned before not only lack a trusted proof,¹ yet, originally, it is also contrary to the nature of the Tribute Agreement and its legal vestiges, and to the essential method of Islam with regards to the foreign relations and the spirit of equity supported always by Islam. The above verse is wholly incompatible with the said views and cannot be relied upon in this respect.

To explain this matter, the following points should be studied in analysing the tribute verse:

1. The first phrase which speaks of fighting those who have been given the Book does not have a legislative aspect, and it has been revealed in connection with the verses dealing with *jihād*, its manner and conditions, and these verses were revealed before the above one which does not intend directly to establish the law of *jihād* against *ahlul kitāb*.

The first point given at the beginning of this verse concerning fighting the followers of heavenly Books is in fact an explanation of another law related to the followers of heavenly Books. The true meaning of the verse is that according to the rules of *jihād*, in cases where fighting *ahlul kitāb* is allowed, and their acceptance of the tribute proposal must be considered as the end of hostilities.

Thus, it must be said that those who take the first part of

¹ The narratives which are cited in this respect by the *Sunni* jurists are weak and unreliable for citation. In the *Shiite* narrations there is nothing in support of the said opinions.

the tribute verse to mean a declaration of war against *ahlul kitāb*, have committed a big and obvious error in their interpretation, since a study of the verses related to *jihād* shows clearly¹ that Islam has never resorted to the declaration of war as a primary step, even in the case of the polytheists and anti-religious groups. It has considered the *jihād* as a duty in special cases and under certain conditions in order to remove the barriers in the way to the universal call of Islam and to liberate the oppressed nations, and loosen the fetters of mental and political servitude.

It goes without saying that the exigencies permitting to fight against *ahlul kitāb* are included in the principles and general rules of the *jihād*. There are many reasons for saying that even if Islam did not provide greater facilities for *ahlul kitāb*, it would never treat them more roughly than it treated the polytheists and other pagans.

2. The word '*ḥattā*' meaning 'until' in Arabic signifies the end of a matter, and the employment of that word in the above verse shows that demanding tribute from the followers of the heavenly Books is not made on the basis of power and imposition, but the reason is that with the conclusion of the said treaty which is based on reciprocal duties, the state of clash, hostility, roughness and alienation may end and mutual relations may be established on the basis of alliance, peacefulness and co-operation through the treaty.

Obviously ideological differences cannot be a permanent barrier in the way of peace and establishment of the conditions which have been agreed upon by groups having differ-

¹ The law of *jihād* and the relevant *āyahs* will be separately discussed in the coming volumes of this series.

ent beliefs, and their execution has been guaranteed by both parties.

Therefore, in the tribute verse the conclusion of a joint treaty is considered as the most essential and a just means for preventing every hostile clash and putting an end to enmity and quarrelsomeness between the Muslims and the followers of heavenly Books. Its implication is to forbid and condemn every act which may lead to dispute and renewal of hostile relationships after the treaty is concluded.

3. The words '*an yad*' in the *āyah*, which is used concerning the payment of the tribute, refers to the ability of *ablul kitāb* in making the payment. The word '*yad*' sometimes means 'possibility' or 'power,' and sometimes 'superiority'. The meaning of the last phrase of the *āyah* is not that hostilities end on the payment of the tribute, since such hostilities come to an end on signing the Tribute Agreement, where as the payment is done at the end of the year.

Therefore in the last sentence the word '*yu'tū*' meaning 'they pay' signifies their readiness to pay.¹ Obviously preparedness and promising to pay the tribute by hand, do not fit in the context of the verse and the sense would mean nothing but that the readiness and the promise of *ablul kitāb* for payment are based on their ability to pay. Further more by paying more attention to the sense of « عن » '*an*', it brings us to a clearer understanding of the point. Had it meant that payment should be by hand, the Arabic preposition should have been used, and the word « يد » (hand) should not have come in singular, but in plural « بأيديهم » (ie. by

¹ *Al-Mabsūt*, Vol. 2, p. 38.

their hands).

4. The last two words of the verse, (وهم صاغرون) (*in submission*) shows the second conditions and the essential basis of the Tribute Agreement¹ which, as we said before, is stipulated in the following way in the Agreement:

"The Allies must bind themselves to the verdicts issued by the competent Islamic courts, and submit to the execution of the Islamic laws."

Linguistically, the word صاغر (in submission) is used in Arabic to mean a person who acknowledges his submission, and smallness, and as this is, in many cases, accompanied by a kind of abjectness, many philologists and interpreters took it to mean 'a person who is content with abjectness and subjection.'² But it goes without saying that actually the word does not signify abjectness and this meaning is a figurative addition to it. Naturally submission before the court which issues verdicts according to the Islamic laws, and as this point is stipulated in a joint treaty guaranteeing the interests of both parties, it by no means necessitates subjection.

The use of the word صاغر is meant to show that the participation of the Jews, the Christians and the Zoroastrians in the joint treaty and their acceptance of the obligation for tribute payment, and submission before the Islamic legal and judicial laws and precepts are based on consent and on free, formal acknowledgement, for, the word صاغر is used of a person who admits his submission and smallness.

Thus, the baseless and extravagant views mentioned before become obvious, as the last sentence of the verse

¹ *Jawahirul Kalām*, Vol. 2, p. 247. *Al-Mabsūṭ*, Vol. 2, p. 20.

² Refer to *al-Mufradāt*, by ar-Rāghib, concerning this item.

(وهم صاغرون) which is the support of the said views, besides signifying no insult, beatings or rough treatment towards the tributary allies, it implies no idea of abjectness in any way of imposition.¹ This case is true of all joint agreements where the commitments of neither party is considered as acceptance of abjectness by the other party, especially as this submission and smallness before the laws and regulations is true in the case of all Muslims and even in respect of the leader and the ruler of the Islamic society.

The Imam Ali, the second great personality of Islam, when he was top in power as a ruler of the Muslims, went to the court before a judge because of a complaint lodged by a Jew against him, and he submitted to trial as an ordinary citizen, and expressed his uneasiness at being shown excessive respect by the judge contrary to the Islamic injunctions.

5. Another meaning which is derived from the phrase (وهم صاغرون) (insubmission) is that receiving the tribute should not be effected in such a way as to damage the supremacy of Islam or the Islamic society, since the tribute is not exploitation nor financial aid which may cause such a damage to Islam and the Islamic society as this can have no legal value.

Similarly the Muslims cannot, in return for the allies' financial obligations, undertake duties which would offend or damage the supremacy of Islam and the Islamic society. Moreover, no Muslim should be tried in the allies' courts. The verdicts issued by these courts are valid only if both parties to the case are tributaries.

¹ *Al-Mabsut*, Vol. 2, p. 38. *Jawahirul Kalam*, Vol. 21, p. 271. *Ahkam Ahludh-Dhimmah*, p. 34.

Nevertheless, according to the Tribute Agreement, all Muslims are bound to respect the religious laws and regulations of the allies in so far as they are not contrary to the articles of the treaty. But, as we said before, this does not involve any abjectness or subjection for either party.

A Talk with Self-Sold Westernised Persons

In view of the explanations given concerning the verse No. 29 of *sūratul-Tawbah*, as well as the other evidences mentioned in relation to the necessity of stipulating the financial commitment in the Tribute Agreement, there remains no doubt that the tribute is one of the two principal articles and conditions of that agreement, and without this article the Tribute Agreement is not binding nor valid.

As we said before, this condition is not alterable with the consent of the two parties, and this matter is equally true of every tribute agreement whether it be concluded between the Muslims and the three religious groups living within the Islamic realm, or as a treaty of peace between a Muslim government and other governments or the Jew, the Christian and the Zoroastrian nations. The abolition of the condition for financial commitment in each of the two above cases will render the agreement null and void.

It is regretted that some of the so-called Islamic writers, because of their failure to understand the philosophy of the Islamic system of tribute, and owing to their supposition that this system is in fact a confirmation of the tax system of the great pre-Islamic empires based on the old system of slavery and mutual treatment, have expressed doubt as to whether the

tribute system is a stable, and unalterable legal Islamic order as to allow its separation from the text of the tribute agreement under present conditions and exigencies.

Dr. Wahba Zuḥayli, author of *Āthārul Ḥarb*, quoting the above doubt from his master, Dr. Muhammad Salām, says:

"The fact is that differences should be admitted in the articles of the Tribute Agreements. Where this agreement is related to the internal conditions of an Islamic country concerning the minorities living in the Muslim realm, no objection may be made against the tribute system, since, in this case, the tribute is nothing but a tax paid by the allied compatriots in return for the duties which the Muslims undertake. But where the Tribute Agreement is used as a means of regulating foreign relations with other nations, the tribute system should not be taken as an authentic element in the agreements. It would be possible to draw up the agreements and conclude them on a different basis according to the views of the Muslim leaders and rulers."

In giving an answer to the above statement, it would be necessary to consider the following points:

1. Even though the tribute system has been used severely by such great empires as Rome and Iran in their foreign relations with weak nations and groups, yet, as we said before, the similarity between the old and new order is only a superficial one, and they are quite opposed in their nature and results. This has already been sufficiently expanded upon.
2. The application of the legal terms of the law of the Tribute Agreement, respect of any agreement is possible only when all the necessary conditions of the said law are included in the agreement. The mistake made by the above writer is

that a peace treaty in the foreign relations of the Muslims may be concluded in the form of '*Hudnā*' (truce) agreement in which there is no financial commitment, and both parties are perfectly free in this matter. But such a treaty, even though binding, does not possess the legal value and vestiges of the law of the Tribute Agreement.

It is true that a competent Islamic government in view of its conditions, exigencies and interests, may conclude a temporary peace treaty of '*Hudnā*' or a permanent Tribute Agreement in order to establish peace in its foreign relations with religious governments and nations of *ahlul kitāb*, but this does not mean that the Muslim rulers can alter the Tribute Agreement or apply it in the case of the agreements lacking the necessary condition.

3. Contrary to the supposition of the said writer and his teacher, in the present conditions of the world and extensive international relations, the tribute system is not only unalterable, but in view of the reciprocal undertakings of governments in international life, tribute may be considered as the smallest and the most trifling responsibility that the allies may undertake in return for the duty of security and over all defence that the Muslims undertake.

In the present world where the exploitation of weak and small countries takes place by powerful governments through various forms of legal and official agreements, and the military and defence treaties are concluded for the protection of the security of weak countries at the cost of the loss of abundant sources and infinite natural wealth by the latter, and where big powers use all kinds of pretexts and scenes to drag other countries and nations into taking part in such agree-

ments, the tribute system is the fairest, and the most peaceful and humane method in international relations.¹

A survey of the international treaties and joint military and defensive pacts concluded within the framework of the western and eastern blocks with the Third World can serve to clarify this undeniable point.

From the viewpoint of international law and rights of aliens and minorities too, the tribute agreement has special advantages and genuine superiorities with which the reader has already been acquainted through previous discussions, and they will be elaborated in the next chapters.

Measure of Financial Commitment

Financial Ability -- Consent

In *al-Mabsūf* Shaykh Ṭūsī writes about the measure of the financial commitment which is stipulated in the Tribute Agreement.

"Tribute has not a fixed measure and amount. The determination of that measure, in view of the financial ability of the tributaries, depends on the judgment of the Muslim leader who may either levy it on cultivable land or on per head basis.

"According to our narrations, the Imam Ali has stipulated

¹ *Al-Qanun ad-Dawli al-'Am*, by Dr. Junayh, p. 132.

48 *dirhams* annually for the well-to-do, 24 *dirhams* for the middle classes, and 12 *dirhams* for those with low income. These amounts were either based on the past considerations or on the present interest.”

Here we come across another manifestation of justice in the law of the Tribute Agreement, since the measure of financial commitment is determined on the basis of the two following just principles:

1. Consideration of the economic condition and financial ability of the allies, and the power of payment of each one of them in proportion to his financial standing.

According to a true narration, Zurāra says: "I asked the Imam aṣ-Ṣādiq about the amount of the tribute and whether this measure must not be exceeded. He answered: 'This depends on the judgment of the leader of the Muslims. He fixes the amount in proportion to a tributary's ability to pay and to his financial standing. They are a group who have undertaken to pay the tribute in order to be saved from captivity and annihilation. Therefore this tribute is paid by them in proportion to their financial ability.'"¹

2. The view of the responsible Islamic government concerning the amount of the tribute is stipulated on the basis of the consent of both parties in the text of the agreement. This agreement may be reduced to the minimum financial ability of the allies. For example, in the early days of Islam, in many Tribute Agreements, the annual amount fixed for each person was one *dinar* which was the equivalent of 5 grams of gold in price. Similarly the kind of the tribute as to its being in cash

¹ *Wasā'ilush-Shi'ah*, Vol. 11, Ch. 68

or in the form of goods was arranged by mutual consent.

Here it should be pointed out that the goods paid to the Muslims as tribute, must not be of a kind having no monetary value, in Islam such as alcoholic drinks, pigs, musical instruments and any tools or utensils used only in illegitimate ways.

But if the tribute is paid out of the sale of the above commodities by the allies, it is acceptable, with the reservation that any responsibility accruing from it will be the allies'.¹

The Duty of the Tribute Collectors

If the committed allies declare indigence at the time of collecting the tribute, or refuse to make payment, they are not to be treated roughly, nor will their property be forcibly confiscated. Muslim agents are duty-bound to treat them leniently.

The Imam Ali in his instruction issued to Malik ibn al-Ashtar, concerning the act of collecting tributes and taxes, said:

"In collecting tribute make your inquiries in favour of the tax-payers since in amending the taxes and ameliorating the condition of the tax-payers, the others will be in a greater tranquility, and without this reform and improvement the others find no peace of mind, for all people live on taxes and tax-payers. Your thought must turn more to the prosperity of the land rather than to collecting taxes, since taxes cannot be obtained without the prosperity of the land. He who seeks taxes without thinking of making the land flourish, will, undoubtedly, ruin the cities and destroy the state of Allah's ser-

¹ Ibid., Ch. 70, *Jawahirul Kalām*, vol. 21, p. 261.

vants, and this condition can last only for a little time. Therefore if the tax-payers complain of such things as their heavy obligations, or of plagues in their fields owing to being covered with water or ruined because of the lack of water, you should give them reduction to the extent of giving them the hope of improving their conditions. Do not ever take it hard to make their burden light, for such an extenuation will serve as savings which will be returned to you in the form of subsequent result in making the country prosperous and your rule beautiful. Moreover, you can in this way win their appreciation and gratitude, and feel happy and satisfied for having enforced justice. After such an extenuation and mitigation, a situation may arise when you will need their aid, and then they will be quite willing to accept a heavy burden, for then, the country can bear every type of responsibility. A country is often ruined as a result of people's indigence, which is in its turn caused by the eagerness of the rulers in amassing wealth, their doubting the durability of their rule, their indifference to the councils of time, and their neglect in learning the lesson of history."¹

We have quoted this fine charter here to show that the taxes about which such just instructions were given include the tribute which is levied on minorities and tributaries. At the same time the spirit of the Islamic justice and indifference to the wealth amassed in this way are inherent in this charter, as well as endeavour to achieve the prosperity of the country and the amelioration of the tax-paying conditions of the tax-payers, and spending the funds to make the realm flourish, as well as many fine points about the enactment of taxation

¹ *Nahjul Balāghah*, Letter No. 53.

laws, collection of taxes and spending them, all of which are for ever an honourable document in favour of the Muslims.

By mentioning the charter of the Imam Ali, we are reminded of another charter of his, issued as a directive to tax-agents concerning the collection of taxes. This charter which is mentioned as the fifty-first letter of the Imam Ali in *Nah-jul-Balāgha*, gives the following instruction to government tax agents:

“Remember that the duty entrusted to you is an easy one, but its benefit and spiritual reward are great. If there were no punishment for the injustice and oppression which are forbidden by Allah, undoubtedly no one would have an excuse in avoiding oppression inspite of the fact that a reward is promised for abstaining from injustice and oppression.

“Show equity to people and fortitude towards their needs, for, you are the keepers of their wealth and the barristers of the *Ummah*, and the deputies of the leaders. Do not enrage or put to shame anyone for his demands, or prevent him from fulfilling his wish. Do not lead them astray by your instruction. Beware of seizing and selling their summer or winter garments for the sake of exacting tributes and taxes, or confiscating their quadrupeds which they need in their work, or taking back their slaves. Do not beat anyone for the sake of a *dirham*, and never encroach on anyone's property, whether a Muslim or an ally, except taking a horse or weapon which are used for aggression against the Muslims.”¹

Some historians have quoted a similar charter related to the governor of Akbara, as follows:

“When you come upon them beware of selling their gar-

¹ Ibid.

ments for the tribute even if it is summertime and they may not need those garments, nor should you sell their provisions and quadropeds, I do not permit you to whip any one of them even a single stroke for the sake of a *dirham*, or keep them standing in demand of a *dirham*."

The above agent says: "I said to the Imam Ali: 'What should I do if I had to return emptyhanded by following this order?' The Imam Ali answered: "Woe upon you! We are a group commanded to show forgiveness and benevolence."

In view of the explanation we have given about the reality of the tribute and its amount, we can understand the worth of the researches of some orientalists who have considered the tribute to be an imposed tax and an abundant source of revenue for an Islamic government, and as a decisive means of converting the tributaries to Islam for the sake of escaping from the payment of tribute.¹

What is more surprising is that Julius Welhausen and Becker, two famous orientalists, in their relevant research, insist that the tribute was not a tax on the tributaries, and that what the jurists had described in this connection was not true, as they had forged it in order to conform the economic system of their time with the period of victories.

Daniel Sident, an orientalist, in his book, *Tribute in Islam*, refers to the above orientalists and says "The fact that a scholar should refute the entire matters obtained from a certain source and consider them forged, deserves attention, but it is not understandable to take a part of an utterance as true and the rest as untrue without giving a good reason for it."²

¹ *Jizyah in Islam*, Cl. 1.

² *Ibid.*, p. 14.

Tribute or Land Tax?

Tribute and land tax are two Islamic jurisprudential terms each of which is used in special cases with a special sense in the authentic documents of the Islamic law, But there are two main errors in the discussions made related to them:

1. Al-Balādhuri in *Futūḥil-Buldan*, the judge Abū Yūsuf in *Al-Khirāj* and some other writers have used (tribute) in relation to land tax in some cases, and *khirāj* (land tax) for per head toll and have employed each of them in lieu of the other.¹

The result of this carelessness has been that some orientalis have in their researches concluded that these two terms are synonymous and both mean imposed tax.

Welhousen, affirming the above view in his *Arab Government and its Collapse*, claims that the tax levied by the Muslims consisted of two kinds, namely land tax and per head tax, but the Muslims did not distinguish the difference

¹ Al-Balādhuri says: "A land liable to *jizyah* of the non-Arab lands". Abu Yusuf, in his *al-Khirāj*, says: "The *khirāj* per capita". Others also said: "Jizyah on the land."

between the two and were ignorant of it.

But such obvious errors of the orientalists are essentially due to the fact that in their studies they do not refer to the original sources, and even in the questions related to the Islamic law and jurisprudential terms they confined their researches to a superficial survey of historical books and presented their conclusions as real research in Islamic branches of knowledge. For instance in the case of the tribute and land tax which are carelessly and figuratively interpreted, they have taken them as synonyms to mean imposed tax.

But a study of the authentic legal and jurisprudential Islamic documents clearly shows the difference between the two.¹ The *jizyah* (tribute) was used as per head tax stipulated in the tribute agreements, while the *khirāj* was used for land tax.

Moreover, the tribute was used only in the case of the financial commitment of the tributaries whereas the land tax was used for both tributaries' commitment and rent of the lands placed by a competent Islamic government at the disposal of the individual Muslim or non-Muslim.

Sometimes land tax was stated in the Tribute Agreements in lieu of the tribute (per head tax), and the tributaries undertook to hand over a part of their crops to the government in the place of the annual land tax. That is why these two terms became occasionally interchangeable.

2. Some of the Sunni jurists following the example of the second caliph have recommended the use of both terms of tribute and land taxes to be stipulated in the Tribute

¹ *Wasā'ilush-Shi'ah*, Vol. 11, Chs. 68 and 72.

Agreements which the tributaries undertake to pay.

Some orientalists, without heeding the evidence and views of other jurists, have considered this matter as an indisputable Islamic fact and have concluded that the heaviness of the tribute and land taxes on non-Muslim farmers compelled them to adopt Islam in order to be exempted from per-head (tribute) tax.

But, according to some authentic narrations received from the religious leaders concerning this question, the tributaries are obliged only to pay the *jizyah* (the tribute). Nevertheless, both parties may state the *khirāj* (land tax) in lieu of the tribute in the agreement. Therefore, the tributaries' financial obligations can be decided according to either of the said forms. Whenever they accept to pay the *jizyah* (tribute) they will not have to pay the *khirāj* (land tax). But if both parties agreed upon the land tax, the tributaries will be exempted from paying the tribute.¹

When land tax is agreed upon by both sides of the treaty, its amount is determined in the same way as the tribute on the basis of the financial ability of the tributaries, and since these tributaries are, thus exempted from the payment of any other tax, it is clear that the tributaries would, after their conversion to Islam, have a greater financial commitment, since the Muslims in the case of *Zakāt* alone have a greater financial obligation than the tributaries, and this tax is only one of many taxes the Muslims have to pay.

The conclusion drawn by some orientalists in this connection, if we think optimistically and refrain from saying that it was done on purpose and for imperialistic objectives, is un-

¹ Ibid., ch. 68.

doubtedly due to one or two exceptional historical incidents. One such case is related to the report of the governor of Egypt to 'Umar ibn Abdul 'Aziz, the Omayyad Caliph, saying:

"The tributaries are rapidly turning to Islam, with the result that the tribute revenue has diminished considerably to this extent that I was compelled to borrow twenty thousand *dinars* from al-Hārith ibn Thābit for administrative expenses."

Another case is related to the governor of Iraq, 'Adiy ibn Arṭat, writing to 'Umar ibn Abdul 'Aziz:

"The people are turning to Islam in groups, and I fear that the government revenue from tributes may decrease."

It is not clear why the orientalists, who have considered these reports so important as to base their researches on them, have failed to follow up the story and ignored the answer and the reactions to the reports of the law-ranked government agents.

The history which mentions these exceptional cases has also spoken of the sharp reaction to them by the rulers of the time. For example we read after the report of the governor of Egypt which was received by 'Umar ibn 'Abdul 'Aziz, that the latter wrote the following answer angrily:

"I made you governor of Egypt and know your weakness. I have ordered my envoy to deal twenty lashes of the whip on your head. May Allah disgrace you for your intention! Do not demand tribute from someone who has converted to Islam. Allah has sent Muhammad for guidance, not for collecting tributes and wealth."

He answered the report of the governor of Iraq in the following way:

"I swear by Allah that I (as a ruler of the time) love to see all people converted to Islam, so that you and I engage in *til-lege* and get our bread by our labour."

Concerning land taxes in the form of rent stipulated by the competent Islamic government, we must point out that this kind of tax has no connection with the tribute and the Tribute Agreement, and when the tenant of such lands is a non-Muslim, his conversion to Islam does not exempt him from land tax unless he transfers the land to someone else.

Who is to Pay the Tribute?

As a Tribute Agreement is concluded with an organised group, it may also be concluded privately with an individual. In either case all those who are included in the agreement are liable to pay the tribute. But in cases where the tribute is to be paid per head, there are several groups of tributaries who are exempted from the payment of the tribute even though they benefit from all the rights and privileges of the agreement.

The First Group:

These are the children and under-age persons as dependents of their fathers, and as long as they have not reached the age of puberty they are exempt from every such responsibility. But on reaching that age they are expected to distinguish proper ways through intellect and reasoning, and if they decide to follow the creed of their parents, they are directly and personally bound by the terms of the Tribute Agreement, other wise they must leave the Islamic realm.

The Second Group:

Women have no financial responsibility, and by depending on their husbands they benefit from the privileges of Tribute Agreement. Women and girls who are have no husbands may take part in the Tribute Agreement and benefit from all its advantages without having a financial responsibility. The Muslims cannot exact anything as tribute from them, and every agreement involving financial commitment for women has no legal validity.

The late scholar al-Hilli, after explaining the above point in *Tadhkiratul-Fuqahā*, says:

"When women offer to pay the tribute, they should be informed that they have no obligation in this respect, and if, inspite of knowing that women are exempt from the payment of the tribute, they desire to pay it, the Muslims may accept the payment as a gift, not as a tribute. In any case they will have no obligation whatsoever, and if they change their mind before payment, they will not be compelled to pay."¹

The Third Group:

The poor and the needy, too, are exempt from tribute payment according to a number of jurists including ash-Shaykh al-Mufid and Ibn Junayd, since tribute is like the *Zakāt* which becomes obligatory at the beginning of every year. Thus a poor man who has no ability to pay has no obligation.

Some jurists have considered the poor of *ahlul Kitāb* liable to tribute payment in accordance with the Tribute Agreement. They argue that the tribute is paid in return

¹ Shaykh Ṭūsī refers to this in *al-Mabsūt*, Vol. 2, p. 40.

for security and residence in the Islamic country and other privileges granted to the tributaries by the said agreement. Therefore both the rich and poor are equally liable to pay it.

Shaykh Ṭuṣī, affirming this view in *Al-Mabsūṭ* says: "There is no reason for omitting the tribute in the case of the poor, since they are included in the generality of the verse 29 of *sūratul-Tawbah*. Therefore if any member of the committed group is unable to pay the tribute, he remains a debtor until he is able to afford payment."¹

But there are the two following reasons for supporting the first view:

1. In view of the analysis given before of verse 29, chapter Immunity, the last phrase shows that the responsibility for tribute payment depends on financial ability, since the word 'yad' does not mean 'hand' but it means 'ability' upon which depends the payment.

2. In some narrations it is explicitly stated that the amount of the tribute is determined on the basis of the measure of individual wealth and ability to pay.² Therefore, how can those who lack financial ability be in a position to pay, since their obligation to pay even a trifling sum is beyond what they can afford?

Here it must be pointed out that it rarely happens for a person to pay a trifling sum annually, and if in accordance with the second view the poor are obliged to pay the tribute, its amount will be in proportionate to their minimum ability to pay.

¹ Ibid., p. 38.

² *Wasā'ilush-Shi'ah*, Vol. 11, Ch. 68.

The Fourth Group:

The aged and the feeble among the minorities are exempt from tribute payment on account of their willy-nilly for being under protection. But there is no unanimity among jurists on this question, and although these groups of the aged and the crippled are secured on the part of the Muslims if they do not engage in fighting and carrying weapons, yet this is not an adequate reason for being exempted from tribute payment, and they are considered liable to pay it according to their financial ability.

Thus even if these persons are feeble and unable to work, there is no reason to exempt them from payment since they benefit from all the rights and privileges of the Tribute Agreement like other tributaries, and the Muslims undertake certain obligations towards them. Therefore they are liable to payment in proportion to their financial ability. But if they are so poor as to be unable to pay, they fall under group three. In such case they may even benefit from a share of the Muslims' public fund.

History illustrates this manifestation of human justice in the following example:

"On his way the Imam Ali saw a distressed old man who was begging from people for aid. He at once inquired about his condition. They said he was a Christian. The Imam Ali cried out angrily:

"O' Muslims, you have imposed so much labour on this man until he has become old and feeble and then you left him to his helplessness and privation'. He then ordered to pay his allowance out of the public fund."¹

¹ Ibid., p. 49.

Fifth Group:

The priests, clergy, monks and the others engaged in religious services are included in the Tribute Agreement without bearing any financial obligation. But some jurists doubt about this matter and consider those of them who have financial ability liable to pay the tribute.

In view of the immunity enjoyed by this group, even if they do not participate in the Tribute Agreement, and owing to the undeniable and explicit fact which is mentioned in the Prophet's treaty with the Christians of Sinai, they are indeed exempted from tribute payment.

The sentence written in the Sinai treaty is as follows:

"Judges and monks are exempt from *khirāj* so are those engaged in worship."

What is meant by *khirāj* here is undoubtedly the 'tribute' since *khirāj* in the sense of "rent" the lands committed to the tributaries related to monks and religious men is nonsense. Moreover, the said treaty has not used the word in the latter sense and in many cases of its use it always means the 'tribute'.¹

The late Shaykh Ṭūsī, in *Al-Mabsūt*, in spite of weakening the view concerning the exemption of the latter two groups from tribute payment, has confessed that there is a narration concerning their exemption.²

The Sixth Group:

The lunatics and those who have lost their senses or are regarded among the stupid or those who bear no obligation and are exempted from tribute payment.

¹ Look up the text of the said treaty.

² *Al-Mabsūt*, Vol. 2, p. 42.

The Imam aṣ-Ṣādiq was quoted to have said: "Islam's tendency is that no tribute is to be levied from the madmen and those who have lost their reason and the ability to understand."¹

Exemption from Tribute Payment

In addition to the above-mentioned groups there are several cases of exemption from tribute payment, including the following instances in which the Muslims have no right to demand tribute from them:

1. In conditions where the interests of Islam and the Muslim society necessitate a closer and friendlier relations with the Jews, the Christians or the Zoroastrians, as binding them to tribute payment may cause them to take sides with the enemies of Islam, or exempting them from the tribute may augment their interest in Islam and their conversion to Islam and join the rank of Muslims.
2. Whenever the Muslims fail to perform the duties stipulated in the Tribute Agreement, the obligation of tribute payment will automatically be removed from the tributaries since in such cases the Tribute Agreement becomes automatically null and void.²
3. When the Muslims are in need of the military assistance of the tributaries, the latter may be exempted from tribute payment through a joint treaty of defence.³
4. Every tributary who explicitly acknowledges the two

¹ *Wasa'ilush-Shi'ah*, Vol. 11, ch. 51.

² *Al-Khiraj*, p. 139. *Futūḥul Bulḍān*, p. 143.

³ For evidences refer to *Futūḥul Bulḍān*, pp. 166 and 168

religious principles of Islam, namely testifying to the oneness of the Creator of the universe and the true worshipped One, as well as the ordainment of the Prophet of Islam by Allah, and is thus formally converted to Islam, is automatically exempted from tribute payment since the Tribute Agreement becomes thus null and void, and his duties and rights will be similar to the other Muslims.

Clearly the exemption from tribute payment in this case does not absolve a tributary who is converted to Islam from the payment of taxes to a responsible Islamic government so as to create the impression that the monetary obligation in the Tribute Agreement has been used indirectly as a means of inducing conversion to Islam. For as we have already said, though the conversion of the tributaries nullifies the agreement and tribute payment, yet there follows no mitigation of their financial duties by this means. On the contrary, new duties and financial commitments are thereby added, such as the *Zakāt* which is much heavier than the tribute, and other restrictions which do not exist in their free conditions of immunity.¹

As the tribute is exacted annually, if a tributary is converted during the tribute year, some jurists consider him exempt from the whole of the annual tribute, and if the tribute of that year has not yet been paid, and if his conversion to Islam has not been for the purpose of escaping payment, Shaykh Ṭusi and some other jurists consider him exempt, whereas the 'Allamah Hilli and a some other

¹ Other explanations in this respect have formerly been related which disclose the prejudice of some orientalisists who spent their lives in distorting the facts of Islam.

jurisprudents think that his conversion absolves him in every case from tribute payment altogether. Concerning the tribute of the past year which is considered a debt, they said: The tribute is demanded for a special reason, and when the reason is removed, the obligation to pay becomes automatically null and void.

Moreover a narration quoted from the Imam Ali (A.S.) states: "No tribute is imposed on a Muslim. Therefore there is no difference between the tribute of previous years and the present, and also between a case when conversion is for the sake of exemption from the tribute or not at all."¹

Fakhrul-Muhaqiqin, quoting the above view of some jurisprudents, says in its support:

"Where all the vestiges derived from unbelief and atheism are removed by conversion to Islam, the omission of the tribute altogether is proved even more evidently,² as is shown by the following narration of the Prophet of Islam who said:

"Islam nullifies whatever is related to pre-Islam."

5. The decease of a tributary before the payment of tribute is due, causes the omission of the tribute.³ But some jurisprudents are of the opinion that he is liable to pay that portion of the tribute which is related to the time when he was still living, and this must be paid out of his patrimony. But if

¹ *Tadhkiratul Fuqaha*, the Book of al-Jihad, p. 442.

² *Iqbalul Fawa'id*, Vol. P. 386.

³ *Ibid.*, p. 387.

he has no patrimony. If he has left nothing, then the tribute is rendered null, and his heirs have no obligation to pay the said sum on behalf of the deceased. If that tributary has already paid his tribute, it is to be restored to his heirs, and if his death has occurred during the year, the amount related to the remainder of the year will be restored, according to the second opinion.

The Tributaries in al-Ḥijāz

According to some narrations mentioned before, non-Muslim subjects (the tributaries) throughout the Islamic realm have no financial obligation or taxes to pay except the tribute in return for the freedom and privileges they enjoy in accordance with the joint Tribute Agreement. There is however one exception to this by which the tributaries must pay a special tax on the basis of another agreement.

This case is related to the time when an individual or group of tributaries enter the land of al-Ḥijāz and stay there for the purpose of commerce or other legitimate activities.

Owing to the respect and sanctity that the land of al-Ḥijāz possesses in Islam for various reasons, this exception is automatically stipulated in the Tribute Agreement that the non-Muslims even if they are allies and confederates, are not allowed to reside permanently in al-Ḥijāz.¹

Consequently, to enter al-Ḥijāz and engage in commerce there, the tributaries must obtain an official permit from the competent Islamic authorities. This permit is not given gratis

¹ *Wasā'ilush-Shi'ah*, Vol. 11, Ch. 52. *Islam wa Huqūq-e Milal*, p. 198..

and applicants must pay certain duties for it.

Shaykh Ṭūsī explains this point in the following way:

"Tributaries may engage in commerce in all Islamic realms except in al-Ḥijāz without any hindrance, since they have perfect freedom in this connection. They can reside in those realms as they wish, but they must not enter that part of al-Ḥijāz which is sacred and as for other parts of al-Ḥijāz, they must obtain official permit to enter, and if they enter al-Ḥijāz without permit, they will be punished according to the law. But Muslims have no right to kill them for entering prohibited zones or imprison them since they are immune according to the Tribute Agreement.

If the tributaries desire to enter al-Ḥijāz, their purpose and destination must be investigated. If they have come to sign a pact, or if Muslims' interests and the Islamic society's needs require it, they may enter al-Ḥijāz without any financial obligation. But if the Muslims do not need them, or if they intend to stay in al-Ḥijāz for the purpose of commerce, this is not possible without paying the prescribed tax.

On entering the land of al-Ḥijāz, the tributaries are not allowed more than three days' stay in each town of al-Ḥijāz, and if they enter al-Ḥijāz without an official permit, they must pay the prescribed fine. Some said that in such a case nothing was demanded from them. Such a view seems likely since they had no obligation in this matter. This involves their immunity against any imposed fine. Others declared that such transgressors will be treated in the same way as the Muslims who enter their countries, are treated.

If the tributaries engage in commerce in al-Ḥijāz, they must pay an annual tax, unlike non-committed aliens who in

case of engaging in commerce in the Islamic zones are required to pay the prescribed tax every time they leave the country since their right of stay in an Islamic country is a temporary, and there is a possibility of their not returning to the Islamic land after leaving it.¹

The late 'Allāmah al-Hilli, after relating Abū Hanifah's theory about "reciprocal treatment", by way of refuting it, says:

"When the transgressive tributaries are treated in the same way as their coreligionists treat the Muslims in foreign countries, as reciprocal, it will, in fact, be as if an innocent person is punished in lieu of the criminal. If the Muslims, however, were to apply the reciprocal method, they must, as the others do, kill their confederate tributaries who live under their protection."²

¹ *Al-Mabsūt*, Vol. 2, p. 49..

² *Tadhkiratul Fuqaha*, Kitābul Jihād, p. 444.

Chapter Five

Muslims' Commitments

*A Survey of the Rights and Privileges
of the Minorities in the United
Islamic Society*

Part one: Inevitable commitments

Part two: Commitable Responsibilities

**Part Three: Closed Boundaries (Illegal
Commitments)**

Reciprocal Responsibilities
and
The Duties of the Islamic Society
Towards its Allies

According to the Tribute Agreement, in return for the trifling duties arranged for committed allies, a number of responsibilities and commitments are prescribed for the Islamic society which must necessarily be fully carried out by the competent and responsible Islamic government with all its possibilities.

Although the Tribute Agreement is apparently concluded on the basis of mutual commitments, yet in view of the heavy weight and value of the commitments undertaken by the Islamic society, which is incumbent on the responsible and authorised Islamic government to perform, in return for the acceptance of the perfectly normal conditions already mentioned by the followers of heavenly Books, this fact becomes more evident that Islam prepares the ground for peace and co-existence even by accepting heavy conditions and abundant obligations. In order to give a legal validity to this one-

sided commitment, and inspite of the valuable advantages granted in this way to the said groups, Islam offers the proposal of peace combined with the preservation of freedom and human aspects in the form of a joint treaty and bilateral agreement on the basis of mutual consent and reciprocal responsibilities.

In such a system even peace is not imposed on the adverse groups, nor is it granted to weak groups and nations or to minorities as a bounty or gift which is naturally coupled with some kind of abasement. On the contrary, in view of all human aspects and with a kind of broadmindedness, the said groups are invited to conclude a treaty in which reciprocal obligations are undertaken. But in order to remove every barrier, it reduces the conditions for peace to its lowest normal level and diminishes the duties and responsibilities of the allies, and at the same time undertakes great obligations in return for the light undertakings of the confederate allies which comprise many rights, privileges and freedom for them.

In general, the responsibilities undertaken by the Islamic society by means of a tribute agreement may be divided into three groups:

1. Duties which are binding for Muslims
2. Responsibilities that a competent Muslim government may undertake pending exigencies and agreement.
3. Conditions and illegitimate obligations which no authority may undertake on behalf of the Muslims in a Tribute Agreement.

Irrespective of the latter conditions, stipulating or non-

stipulating them would be void of any legal value, concerning two types of the above conditions, it must be said that the first group of duties must be stipulated in the text of the Tribute Agreement, and its non-stipulation in the agreement would never absolve the Muslims for the responsibility with regard to those conditions.

The second group becomes binding only if it is explicitly stipulated in the text of the agreement and agreed upon by both parties. In that case all Muslims must observe the said obligations and the competent Islamic government must guarantee its execution and undertake it to the limit of its power.

Now we will deal with the manner and details of the three above duties and conditions in so far as the size of the book permits.

Part one:
Unavoidable commitments of the
Muslims

Once the unity and the solidarity are established between the Islamic society and the society of the followers of the heavenly religions (*ahlul kitab*) through the conclusion of a Tribute Agreement, a number of duties and responsibilities will be imposed on the authorities of the Islamic society which must be accepted. These duties will be discussed here under the title of unavoidable commitments of Muslims.

1. An Overall Immunity

The first duty of the Muslims the Tribute Agreement imposes upon them is to offer an absolute and overall immunity to the tributary allies on the basis of which the life, property and honour of the allies are completely protected by the responsible Muslim government, and they are allowed to enjoy these privileges like other Muslims.

This guarantee is both internal and external. Internally, all the tributary allies throughout the Muslim realm are protected

against every transgression upon their life, property and honour and other legitimate and legal rights. Externally, the Muslims undertake the defence against the aggression of outside enemies from beyond the Muslim borders, directed at the allies, as to be defending the Islamic society with all their might and possibilities.

As we said in the analysis of the verse 29 of *sūratul-Tawbah*, the Tribute Agreement is considered by the Qur'an to be the end of hostilities, and thus every hostile act by the Muslims against the life, property or honour of the allies, is condemned and punishable.

Therefore every Muslim or non-Muslim who commits murder or injury or molestation against an ally is punished according to the judicial and penal laws of Islam and the Islamic courts and responsible executive organisations are duty-bound to investigate such matters and carry out the enacted punishment.

Similarly if theft or transgression is committed upon the property or financial rights of the tributaries, their complaints are investigated like those of the Muslims according to the Islamic laws and regulations, and the guilty is punished. In the same way, any offense against the honour of the tributary allies is legally dealt with and the guilty is punished.

A narration of the Holy Prophet says: Beware that if anyone treats an ally (a confederate) unjustly or violates his pact, or forces him to work beyond his capability and possibility, or takes something from him contrary to his willingness, I will call him to account on the Day of Judgment."¹

The Prophet is also quoted as saying: "He who molests any

¹ Abū Dawūd's *Sunan*, Vol. 3, p. 231.

tributary does not belong to me nor is he among my followers."

The Imam Ali say in this connection:

"Those who conclude a treaty with us, pay us tribute in order to have their property protected as ours, and their blood respected and immune as ours."¹

In another narration the Prophet said: "Anyone who kills a tributary will never breathe the smell of paradise."

Al-Māwardi gives the following quotation in *al-Ahkāmus-Sultāniyyah*: "The last word recommended by the Prophet to the Muslims was: Preserve my memory in my pacts."²

In the treaties concluded by the Prophet with the followers of heavenly Books, the commitment of an overall guarantee for the tributaries has been explicitly stated in the following two ways:

1. Abstention of the Muslims from any kind of aggression and injustice against life, property and honour of the tributary allies.

2. Protecting the life, property and honour of the tributaries and defending them against foreign aggression:

Concerning the property of the tributary allies we should add the point that the word 'property' does not only include their goods which have a value according to the Islamic law, but also a financial guarantee for anything which they legally possess and which is considered valuable to them. For example beacon and alcoholic drinks and other kinds of flesh the consumption of which is forbidden in Islam as well as

¹ *Nasbur-Rāyah*, p. 381 quoting *Alharul Harb*, p. 729.

² *Al-Ahkāmus-Sultāniyyah*, p. 138.

commodities the use of which is prohibited in Islam, when they belong to the tributaries, are immune like any other property of theirs, unless in the text of the treaty reservations and restrictions are stipulated in connection with them, forbidding their use and buying and selling them or making a public offer of them.

Unilateral Defence Treaty

In fact, a Tribute Agreement is a kind of unilateral defence treaty by which the responsibilities of the Muslims are greater than those of the unilateral military and defensive pacts.

In order to realize the human value of this agreement and the genuineness of its spiritual and co-existential aspects, as well as the worthlessness of its financial and material benefits for the Muslims as a contracting party, it would be sufficient to have a look at the terms of the military and defensive treaties of the present world which boasts of having conquered the space.

A study of these so-called defensive pacts can be of interest in two respects: Firstly in our view, it is in return for huge sums received as compensation from a government, that is protected by the other party according to the treaty. The countries which possess abundant underground resources such as oil, mines and other precious elements lose the greater part of their national wealth through such defensive treaties.

Other small and weak countries which possess strategic advantages, become a military base and are sometimes occupied on the pretext of defending them by the forces of the

other contracting government.

Secondly, concerning the manner of defence, the main danger which generally threatens a small allied country is from the very government which has undertaken its defense in return at a heavy cost. It has often happened on the scene of international conflicts that when such small countries have been attacked, no effective reaction has been shown by the committed defending government, and the latter has abstained from performing its defensive obligations on various pretexts. The only benefit of such military and defensive pacts is that whenever the very contracting country is in danger of being attacked, the small allied country is required to support it, even at the cost of the latter's total destruction in some cases.

The pacts concluded by Hitler's Germany with its neighbours and others, as well as the irreparable losses suffered by small countries in the first and second World Wars owing to these defensive pacts in which these countries placed their hopes, and the kind of treaties concluded by the two Superpowers with the oil producing countries, and considering what was going on in Vietnam and the Arab Middle East, can all be clear and actual examples of the bitter fact that the era of the conquest of space has become the most disgraceful page in the human history.

Undoubtedly those who think that colonization is dying out in the world are quite mistaken. It is true that the form and peculiarity of colonization has undergone some changes in the last half of the century, but its nature has not only remained unchanged under the deceptive mask of military and defensive pacts, but its power and danger too have been

augmented.

If yesterday's colonization has made its exit through the door, today's colonization has surely entered through the window. Even if it is closed by the exigencies of the time on colonizers, they will enter through another inlet with a fresh mask fitting the spirit of the era of space conquests to plunder the wealth of the nations.

2. Religious Freedom

Islam considers the acknowledgement of the reality of the heavenly religions and the chosen divine prophets and the respect for their creeds and laws as a part of its basic beliefs. The Qur'ān has in many of its chapters and verses drawn the attention of the people to this principle and has explicitly declared a belief in former prophets to be co-ordinate with the belief in the Prophet of Islam.

The Qur'ān Says:

قُولُوا ءَاٰمَنَّا بِاللّٰهِ وَمَا اُنزِلَ اِلَيْنَا وَمَا اُنزِلَ اِلَىٰ اِبْرٰهِيْمَ وَاِسْمٰعِيْلَ وَاِسْحٰقَ وَيٰقُوْبَ
وَالْاَسْطٰطِ وَمَا اُوْتِيَ مُوسٰى وَعِيسٰى وَمَا اُوْتِيَ النَّبِيُّوْنَ مِنْ رَبِّهِمْ لَا نُفَرِّقُ
بَيْنَ اَحَدٍ مِنْهُمْ وَنَحْنُ لَهُ مُسْلِمُوْنَ

"Say: We believe in Allah and (in) that which has been revealed to us, and (in) that which was revealed to Ibrahim and Ismā'il and Ishaq and Ya'qūb and the tribes, and (in) what was given to Mūsā and 'Isā, and in that which was given to the prophets by their Lord; making no distinction among them, and to him we are submitting". (sūratul Baqarah / 136)

It says also:

ءَاٰمَنَ الرَّسُوْلُ بِمَا اُنزِلَ اِلَيْهِ مِنْ رَبِّهِ. وَالْمُؤْمِنُوْنَ كُلٌّ ءَاٰمَنَ بِاللّٰهِ وَمَلٰئِكَتِهِ. وَكُتُبِهِ.
وَرُسُوْلِهِ. لَا نُفَرِّقُ بَيْنَ اَحَدٍ مِنْ رُسُوْلِهِ.

"The Messenger believes in what has been revealed to him from his Lord, and (so do) the believers; they all believe in Allah and His angels and His books and His Messengers; we do not differentiate between any of His Messengers." (sūratul Baqarah / 285)

In some verses the Qur'ān speaks of the past prophets as a model and as an encouragement to the Prophet of Islam.

وَكُلًّا نَقُصُّ عَلَيْكَ مِنْ أَنْبَاءِ الرُّسُلِ مَا نَشِئْتُمْ بِهِ فُؤَادَكَ

"And everything we relate to you of the history of the Messengers is to fix your heart therewith." (sūratu Hūd / 120)

فَأَصْبِرْ كَمَا صَبَرْنَا أَوْلُوا الْعِزْمِ مِنَ الرُّسُلِ

"Therefore bear up patiently as the steadfast Messengers did forebear." (sūratul Ahqāf / 35)

وَإِنْ يَكْذِبُوا فَكُذِّبَتْ رُسُلٌ مِنْ قَبْلِكَ

"And if they call you a liar, truly Messengers before you were called liars." (sūratu Fātir / 4)

In some verses where the distinct qualities of the Prophet of Islam are described, he is referred to as a confirmer of former messengers and his creed and Book as a testimony of the truth of the former heavenly books and creeds:

نَزَّلَ عَلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ وَأَنزَلَ التَّوْرَةَ وَالْإِنْجِيلَ ﴿٣﴾ مِنْ قَبْلُ هُدًى لِّلنَّاسِ وَأَنزَلَ الْفُرْقَانَ

"He revealed to you the Book with truth, verifying that which is before it, and he revealed the Torah and the Gospel aforetime, a guidance for the people, and He revealed the Furqān." (sūratu ʿAlī ʿImrān / 3)

وَالَّذِي أَوْحَيْنَا إِلَيْكَ مِنَ الْكِتَابِ هُوَ الْحَقُّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ

"And that which we revealed to you of the Book, that is the truth verifying that which is before it." (sūratu Fāḥir / 31)

يَا أَيُّهَا الَّذِينَ آمَنُوا أَلَمْ نَزَلْنَا مُصَدِّقًا لِمَا مَعَكُمْ

"O you who have been given the Book, believe that which we have revealed, verifying what you have." (sūratun - Nisā' / 47)

The Qur'an spares nothing in praising the true followers of the prophets and the divine religions in so far as they have been worthy of it,¹ and has elevated and sanctified the lofty position of the past messengers over the above what their followers believe, and has considered them free from every error and pollution.

Similarly, contrary to what is in the hands of their believers, and said to be of these heavenly creeds, the Qur'an considers these religions free from all charges of false and im-

¹ 'Alī ʿImrān/50, 75 and 113.

proper matters concerning the divine prophets,¹ and in general the religion of Moses and Christ are introduced as something of a high spiritual level fitting the sanctity of divine revelation, and it can by no means be compared with the misinterpreted creeds of the Torah and the Bible.

This in itself speaks of an undeniable fact that Islam has shown a deep, fair and actual respect for heavenly creeds and their messengers, and regarded believing in it a part of the belief of every individual Muslim.

It goes without saying that this respect for, and belief in, the freedom of religions and their followers can be valuable only when they are combined with an admission of the truthfulness of those religions, however proportional it may be. We see this respect and freedom in Islam with respect to the three well-known creeds and their followers, especially so, since Islam considers its spiritual bond inseparable from the actuality of the divine religions.

The Qur'ān says:

لَا نَفْرَقُ بَيْنَ أَحَدٍ مِنْهُمْ وَنَحْنُ لَهُ مُسْلِمُونَ

"We do not make any distinction between any of them, and to Him do we submit." (sūratul Baqarah / 136)

The Torah in the Qur'ān

The Qur'ān considers the Old Testament as a heavenly Book of revelation containing true divine laws. *Ayah* 44 of *Sūratul Mā'idah* explicitly states:

¹ Genesis, 19/30-83, Samuel, Ch. 2.

إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ

"Surely we revealed the Torah in which was guidance and light."

And in the *āyah* before it, it says:

وَكَيْفَ يُحْكِمُونَكَ وَعِنْدَهُمُ التَّوْرَةُ فِيهَا حُكْمُ اللَّهِ

"And how can they choose you as a judge when they have the Torah wherein is Allah's judgment?"

In *āyah* 111 of *Sūratul-Tawbah*, the Torah, the Gospel and the Qur'ān are taken to be on the same footing:

وَعَدًّا عَلَيْهِ حَقًّا فِي التَّوْرَةِ وَالْإِنْجِيلِ وَالْقُرْآنِ

"A promise which is binding on Him in the Torah and the Gospel and the Qur'ān."

In the several *āyahs* mentioned before, the Prophet of Islam is referred to as the confirmer of the Torah, and the Torah the herald of the mission of Islam's Prophet:

الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ

"Whom they find written down with them in the Torah and the Gospel." (*sūratul A'raf* / 157)

In refuting those who denied the revelation of the Qur'ān, it speaks of the Torah of Moses as a living testimony:

إِذْ قَالُوا مَا أَنْزَلَ اللَّهُ عَلَى بَشَرٍ مِّن شَيْءٍ قُلْ مَن أَنْزَلَ الْكِتَابَ الَّذِي جَاء بِهِ
مُوسَى نُورًا وَهُدًى لِّلنَّاسِ تَجْعَلُونَهُ قَرَاطِيسَ تُبْدُونَهَا وَتُخْفُونَ كَثِيرًا

"When they say: Allah has revealed nothing to a human being. Say: Who revealed the Book which Musa brought, a light and a guidance to men? You make into (separate) sheets which you show while you conceal many?" (sūratul An'ām / 91)

Further to this verse are mentioned the alterations and improper pilferings committed by the false supporters claiming to uphold the creed of Moses, and in other verses they are severely criticised and berated for such an unforgivable guilt and treason:

مَثَلُ الَّذِينَ حُمِّلُوا التَّوْرَةَ ثُمَّ لَمْ يَحْمِلُوهَا كَمَثَلِ الْحِمَارِ يَحْمِلُ أَسْفَارًا

"The likeness of those who were laden with the Torah, then they did not carry it, is as the likeness of the ass carrying books." (sūratul Jumū'ah / 5)

أَلَمْ تَرَ إِلَى الَّذِينَ أَوْتُوا نَصِيبًا مِّنَ الْكِتَابِ يُشْرُونَ الصَّلَاةَ وَيُرِيدُونَ أَن يُنْفِضُوا
السَّيْلَ ﴿١٥﴾ وَاللَّهُ أَعْلَمُ بِأَعْدَابِكُمْ وَكَفَىٰ بِاللَّهِ وَلِيًّا وَكَفَىٰ بِاللَّهِ نَصِيرًا ﴿١٦﴾
مِنَ الَّذِينَ هَادُوا يَحْرِفُونَ الْكَلِمَٰتَ عَن مَّوَاضِعِهَا

"Have you not seen those to whom a portion of the Book has been given? They buy error and want you to lose your way. And Allah knows your enemies better and Allah suffices as a guardian, and Allah suffices as a Helper. Of those who are Jews there are those who alter words from their

places." (sūratun - Nisā / 44,45)

فِيمَا نَقَضُوا مِيثَاقَهُمْ لَعَنَّاهُمْ وَجَعَلْنَا قُلُوبَهُمْ قَاسِيَةً
يُخَوِّفُونَ الْكَلِمَ عَن مَّوَاضِعِهَا وَتَسُوا حَظًّا مِمَّا ذُكِّرُوا بِهِ

"But on account of their breaking their covenant we cursed them and made their hearts hard; they alter words from their places and they neglected a portion of what they were reminded of." (sūratul Mā'idah / 13)

Thus they were considered as lacking worth and true faith from the day they failed to follow the truth of the old testament and carry out its injunctions.

قُلْ يَا أَهْلَ الْكِتَابِ لَسْتُمْ عَلَى شَيْءٍ حَتَّى تُقِيمُوا التَّوْرَةَ وَالْإِنجِيلَ

"Say: O followers of the Book you follow no good till you keep up the Towrāt and the Injeel." (sūratul Mā'idah / 68)

In these verses the Qur'ān has pointed out that what is left in the hands of the Jews and the guardians of the Jewish faith is not the true Torah of Moses, and owing to the repeated alterations and misinterpretations produced throughout history by the Jewish traders in religion,¹ nothing is left of the Torah but a name.

The Gospel in the Qur'ān

The Qur'ān considers the Bible as the divine Book of Jesus, son of Mary, the great Messenger and confirmer of the Torah as a divine light and guidance:

¹ Ali 'Imrān/187. At-Tawbah/9. An-Nahl/95. Al-Baqarah/79, 80, 174.

وَقَفَّيْنَا عَلَىٰ آثَرِهِم بِعِيسَى ابْنِ مَرْيَمَ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ
التَّوْرَةِ ۚ وَءَاتَيْنَاهُ الْإِنجِيلَ فِيهِ هُدًى وَنُورٌ

"And we sent after them in their footsteps Issā, son of Maryam, verifying what was before him of the Towrat and we gave him the Injeel in which was guidance and light." (sūratul Mā'idah / 46)

As we have seen in the above verses, the Bible is presented with the Torah on the same footing of the Qur'an and a testimony of the truth of Islam's mission. Its followers are recommended to refer to their heavenly Book and act upon its injunctions, thereby guaranteeing their salvation through observing them properly.

وَلَوْ أَنَّهُمْ أَقَامُوا التَّوْرَةَ وَالْإِنجِيلَ وَمَا أُنزِلَ إِلَيْهِمْ مِنْ رَبِّهِمْ لَأَكَلُوا مِنْ
فَوْقِهِمْ وَمِنْ تَحْتِ أَرْجُلِهِمْ مِنْهُمْ أُمَّةٌ مُقْتَصِدَةٌ ۗ وَكَثِيرٌ مِنْهُمْ سَاءَ مَا يَعْمَلُونَ

"And if they had kept up the Towrat and the Injeel and that which was revealed to them from their Lord, they would certainly have eaten from above them and from beneath their feet; there is a party of them keeping to the moderate course, and as for most of them, evil is that which they do." (sūratul Mā'idah / 66)

The Qur'an considers polytheism and trinity as deviation from the teachings of the Bible of Jesus Christ, and presents Christianity as a creed of monotheism.

وَقَالَ الْمَسِيحُ يَبْنَىٰ إِسْرَائِيلَ لَعِبُدُوا
اللَّهَ رَبِّي وَرَبَّكُمْ إِنَّهُ مَنْ يُشْرِكْ بِاللَّهِ فَقَدْ حَرَّمَ اللَّهُ عَلَيْهِ
الْجَنَّةَ وَمَأْوَهُ النَّارُ وَمَا لِلظَّالِمِينَ مِنْ أَنْصَارٍ

"And the Messiah said: O children of Israel! Serve God, my Lord and your Lord. Surely whoever associates others with God, then God has forbidden to him the garden, and his abode is the fire, and there shall be no helpers for the unjust." (sūratul Mā'idah / 72)

The Qur'ān has also declared the heavenly book of Isa, son of Maryam, to be the only single Bible which has disappeared, and the various Bibles which appeared later were produced by the makers of the then current Christianity:

وَمِنَ الَّذِينَ قَالُوا إِنَّا نَصَرْنَا أَحَدَنَا وَيَسْتَفْتَهُمْ
فَسُوا حَظًّا مِمَّا ذُكِّرُوا بِهِ فَأَغْرَيْنَا بَيْنَهُمُ الْعَدَاوَةَ
وَالْبَقْسَةَ إِلَى يَوْمِ الْقِيَامَةِ وَسَوْفَ يُنَبِّئُهُمُ اللَّهُ بِمَا كَانُوا يَصْنَعُونَ

"And with those who say, we are Christians, we made a covenant, but they neglected a portion of what they were reminded of, therefore we Excited among them enmity and hatred to the day of Resurrection, and Allah will inform them of what they did." (Sūratul Mā'idah/14)

فَوَيْلٌ لِلَّذِينَ يَكْتُبُونَ الْكِتَابَ بِأَيْدِيهِمْ
ثُمَّ يَقُولُونَ هَذَا مِنْ عِنْدِ اللَّهِ لِيَشْتَرُوا بِهِ ثَمَنًا قَلِيلًا
فَوَيْلٌ لَهُمْ مِمَّا كَتَبَتْ أَيْدِيهِمْ وَوَيْلٌ لَهُمْ مِمَّا يَكْسِبُونَ

"Woe, then, to those who write the book with their hands and then say: This is from Allah, so that they may take for it small price; so, woe to them for what their hands have ritten and woe to them for what they earn." (sūratul aqarah / 79)

Invitation and Propagation on the Basis of Logic and Reason

To understand the attitude of Islam towards the freedom of thought and belief, we may study the manner of Islamic invitation and propagation which is declared as a general duty in the law of Islam.

Clearly, every school of thought which adopts the spread of its ideas and principles as a goal and duty for its followers, cannot make its claim acceptable if it recommends every legitimate and illegitimate means for the promotion of its goal, or considers all regulations violable in this way. Much as may declare itself as a supporter of the freedom of thought and belief, it cannot be acceptable, since all values in such a school are proportional, alterable and open to interpretation according to the criteria of expansionism.¹

A school which respects human values and considers the spread of ideology and its values as necessary for the realisation of the authentic values must only make use of reason and logic, and condemn resorting to force and every means which do not correspond with human values.

In this respect Islam is a model faith and school, and since it is deeply interested in spreading its faith and law in the world, it does not allow the use of unnatural means which go contrary to the legitimate freedom for the sake of the promotion and attainment to the above goal. It relies only on truth, logic and reason as the guarantee of execution in attaining the ultimate objective.

¹ This subject is seen in such schools as Communism, Zionism and Machiavelism. It has further been practically proved by the repeated acts and the history of these schools.

Based on the principle of condemning force in matters of belief, Islam explicitly admits that the question of faith and belief must be fulfilled through free will and comprehension. It does not only condemn imposed belief, but also considers worthless a faith which is not based on logic and reason, but adopted only through imitation. The Qur'an has in many of its verses reproached those who have thus followed the religion of their fore-fathers.

The respect shown to the freedom of belief may well be seen in the *ayah* No. 256 of *sūratul Baqarah*:

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ

"There is no compulsion in religion: truly, rectitude has become distinct from falsehood calling people to the true faith and propagating truths similar to spreading knowledge only through logic and reason. The attitude of the Qur'an in this connection may be understood from the following verses:

ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ
وَالْمَوْعِظَةِ الْحَسَنَةِ وَحَدِّ لَّهُم بِالَّتِي هِيَ أَحْسَنُ

"Call to the way of your Lord with wisdom and goodly exhortation, and argue with them in the best manner." (sūratun - Nahl / 125)

وَقُلْ لِلَّذِينَ أُوتُوا الْكِتَابَ وَالْأُمِّيِّينَ
ءِ اسْلَمْتُمْ فَإِنْ اسْلَمُوا فَقَدْ أَهْتَدُوا وَإِنْ تَوَلَّوْا فَإِنَّمَا
عَلَيْكَ الْبَلْغُ وَاللَّهُ بِصِيرٍ بِالْعِبَادِ

"And say to those who have been given the Book, and to the illiterate: Do you submit yourselves? So if they submit, then indeed they are guided; and if they turn back then upon you is only the conveyance (of the message) and Allah is Observer of the servants. (sūratu Āli'Imrān / 20)

وَلَا تَجِدُوا أَهْلَ الْكِتَابِ إِلَّا بِاللَّيْ هِيَ أَحْسَنُ إِلَّا الَّذِينَ ظَلَمُوا مِنْهُمْ وَقُولُوا
 آمَنَّا بِالَّذِي أُنزِلَ إِلَيْنَا وَأُنزِلَ إِلَيْكُمْ وَإِنهْنَا وَإِلَهُكُمْ وَجِدْ وَنَحْنُ لَهُ مُسْلِمُونَ

"And do not argue with ahlul kitāb, save in the best, manner except those of them who act unjustly, and say: We believe in what has been revealed to us and revealed to you, and our Allah and your Allah is One, and to Him do we submit." (sūratu Ānkabūt/46)

فَإِن أَعْرَضُوا فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا إِذْ أَلْبَسْنَا

"But if they turn away, we have not sent you as a guardian over them; on you is only to deliver (the message)." (sūratush-Shurā / 48)

وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ مِنَ فِي الْأَرْضِ كُفَّهِمْ
 جَمِيعًا أَفَأَنْتَ تَكْرَهُ النَّاسَ حَتَّى يَكُونُوا مُؤْمِنِينَ

"And if your Lord had pleased, surely all those who are in the earth would have believed, all of them; will you then force men to become believers?" (sūratu Yūnus / 99)

The Qur'an recommends gentleness and affability and peaceableness in religious arguments and in calling people t

the religion of Allah, because it considers such a call and religious disputation the only worthy way for man in seeking truth and discovering facts. Moreover, since the creed of Islam is based on undeniable truths and is supported by intellect, reasoning and logic and on man's pure disposition, it is in need of no illogical means.

This method is followed more clearly and humanely by the Qur'an with regard to the followers of heavenly books who are closer to truth. It resorts to a broader and deeper vision in acquainting them with greater truths related to their inherent belief in the Creator of the universe, about which all the followers of the prophets are unanimous, and using it as a turning point in inclining to Allah.

The following heavenly and eternal call clarifies this fact:

قُلْ يَا أَهْلَ الْكِتَابِ تَمَّ إِلَهُنَا إِلَى كَلِمَةٍ سَوَّاهُ بَيْنَنَا وَبَيْنَكُمْ
 أَلَّا نَعْبُدَ إِلَّا اللَّهَ وَلَا نُشْرِكَ بِهِ شَيْئًا وَلَا يَتَّخِذَ بَعْضُنَا
 بَعْضًا أَرْبَابًا مِنْ دُونِ اللَّهِ فَإِنْ تَوَلَّوْا فَقُولُوا اشْهَدُوا بِأَنَّا مُسْلِمُونَ

"Say: O followers of the Book, come to a word common between us and you that we shall not worship any (god) but Allah, and that we shall not associate anything with Him, and that some of us shall not take one another as lords besides Allah; but if they turn away, then say: Bear witness that we are submitting ones. (sūratu Āli'Imrān / 64)

A study of the ways of the Prophet of Islam in inviting various groups of *ahlul Kitab* who live in the Arabian peninsula or neighbouring zones, as well as the recommendations he made to the missions, official envoys and messengers as shown by the contents of the letters, messages and texts of treaties, can reveal to us the extent of the respect shown by

Islam towards the beliefs and convictions of various groups, especially the followers of heavenly Books.¹ The questions of freedom, respect for beliefs and condemnation of compulsion and imposition were not limited to religious beliefs, but they also related fully to practice. Islam considers any use of force in the performance of the Islamic rites by non-Muslims wrong and condemns it. The late Muḥaḥiq says in his *Sharāyi'i* that a Muslim husband who has a Jewish or Christian wife cannot compel her to perform *ghusl*.

Free Discussion

Islam does not only respect the beliefs of the followers of heavenly Books, but it has also preserved for them the right to discuss religious beliefs with Muslims within the framework of intellect and reasoning, and defend their own convictions freely and without prejudice, and engage in arguments concerning the Islamic beliefs.

The Holy Prophet showed much respect to the envoys, scholars and clergy of non-Muslim groups who visited al-Medina, and permitted them to express their ideas, criticism and problems freely. He himself engaged in reasoning and discussion with them, proving the truth and the rightfulness of Islam's divine mission.

Similarly the Imam Ali repeatedly attracted those who came to him to argue on religious matters by his logic and lofty position as a spiritual man of learning, and convinced them of conversion to Islam.

During the time of other religious leaders, too, great scholars and clergymen of *ahlul Kitab* came to discuss religious

¹ Refer to Ch. 4 of *Islam and Peaceful Co-existence*.

matters with the Imams of the Prophet's household, and some of those sessions were held in the presence of the caliphs of the time and distinguished personalities of various religions. The Islamic leaders engaged in discussions with Jewish and Christian religious leaders and in some cases they dispatched their own companion for this task.¹

The Qur'an states the law of Islam in this connection, in the following verses:

وَحَدِّثْهُمْ بِالَّتِي هِيَ أَحْسَنُ

"And argue with them in the best manner."

وَلَا تَجِدُوا أَعْمَلَ الْعِبَادِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ

"And do not argue with *ahlul kitāb* except in the best manner." (sūratul 'Ankabut / 46)

It must be remembered that Islam itself invites its opponents to discussion to seek the truth and in cases where no possibility exists for disputation and discussion, it encourages people to reflection and meditation concerning matters of faith in order to find the right way and discover the true creed.

There is no doubt that the continuation of free discussions among religious leaders and scholars within the bounds of logic, intellect and reason is the best way for bringing contrary views closer to one another and produce unity of thought and faith, and at least at a lower level, to result in mutual understanding and weaken or destroy fanaticism.

As regards preparing the grounds for free discussion, it is in itself one of the goals of Islam in the tribute law and the conclusion of international peace treaties, there being no

¹ The late Tabrasi in his *Ihtijāj*, relates many examples of the discussions of the Prophet (S.A.) and the Imāms of Ahlul Bayt (A.S.) with the opponents of Islam and *Ahlul Kitāb*, which may be referred to.

other way for the fulfilment of the aims of Islam but this and to make it worthy of the universal ideology of this divine religion.

Obviously the right of free discussion does not mean that a tribute agreement may be used as an excuse for anti-Islamic propaganda and for causing doubt in people's minds or for poisoning public thought. Since the Muslims cannot engage in religious discussions with their opponents except through intellect, logic and reason, Islam, too, recommends the followers of other religions not to use illogical methods, to criticise Muslim beliefs in the name of religious freedom, and in this way mislead the public who may lack the power of mental analysis, or quench the flame of hatred and prejudice by seditious propaganda.

The kind of free discussion that Islam considers legitimate in a tribute agreement, for its opponents is a discussion which is devoid of every kind of obstinacy, hatred, rancour, demagoguery, unfairness, fanaticism and every other self-interested motive, and is based on intellect and reasoning and seeking of truth.

Thus all misleading propaganda, demagogic disputes, and seditious arguments are not only considered an offense and forbidden by the tribute agreements, but Islam is also fundamentally opposed to such illogical activities leading to riot and sedition, and considers them a crime bigger than murder. The Qur'an says:

الْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ

"And sedition is worse than killing." (sūratul Baqarah /

191)

One of the real aims of the Islamic *jihad* is to combat such seditious and treacherous acts and all Muslims have the duty to quell the seditions.

The Qur'an Says:

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ لِلدِّينِ لِلَّهِ

"And fight with them until there is no (more) sedition and religion becomes Allah's (alone) (sūratul Baqarah / 193)

The Forbidden Argument

Arguments over religious matters are divided into two types by the Qur'an according to their basis and objectives. The one which is called "Argument in the best manner" is a general and legitimate way of seeking religious truth.

ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ
وَالْمَوْعِظَةِ الْحَسَنَةِ وَجِدْ لَهُم بِالَّتِي هِيَ أَحْسَنُ

"Call to the way of your Lord with wisdom and goodly exhortation and argue with them in the best manner." (Suratun-Naml/126)

The other one which lacks logic and reasoning and is based on wrong and selfish motives, is considered an unforgivable sin.

We come across many verses in the Qur'an each of which condemns such an illogical argument in a particular manner and severely criticizes those who engage in it.

In one verse it reproaches those who in their ignorance engage in arguments without any logic or reasoning. It says:

الَّذِينَ يُجَادِلُونَ فِي آيَاتِ اللَّهِ بِغَيْرِ سُلْطَانٍ أَتَتْهُمْ كِبْرُ مَقْتًا عِنْدَ اللَّهِ
وَعِنْدَ الَّذِينَ ءَامَنُوا كَذَلِكَ يَطْبَعُ اللَّهُ عَلَى كُلِّ قَلْبٍ مُتَكَبِّرٍ جَبَّارٍ

"Those who argue concerning the signs of Allah without any authority given to them; greatly hated is it by Allah and by those who believe. Thus does Allah set a seal over the heart of every proud, haughty one." (Sūratul Mu'min / 35)

Elsewhere it speaks of those who intend to vanquish truth by wrong means, and says:

وَجَدَلُوا بِالْبَاطِلِ لِيُدْحِضُوا بِهِ الْحَقَّ فَأَخَذْتَهُمْ فَكَيْفَ كَانَ عِقَابِ

"And they argued by falsehood to refute by it the truth, therefore I destroyed them. And how my punishment was!" (Sūratul Mu'min / 5)

In another *ayah* it says about exposing the plots and self-interested motives of such arguers:

وَإِنْ جَادَلُوكَ فَقُلِ اللَّهُ أَعْلَمُ بِمَا تَعْمَلُونَ

"And if they argued with you, say: Allah knows better what you do" (Sūratul Hajj / 68)

وَإِنَّ الشَّيَاطِينَ لَيُوحُونَ إِلَىٰ أَوْلِيَآئِهِمْ لِيُجَادِلُوكُمْ

"And the Satans suggest to their friends that they should content with You." (Sūratul An'ām / 122)

Then it speaks of the fate of such unsuccessful individuals:

الَّذِينَ تَرَىٰ إِلَىٰ الَّذِينَ يُجَادِلُونَ فِي آيَاتِ اللَّهِ أَنَّهُمْ يُصِرُّونَ

"Have you not seen those who dispute with respect to the communications of God: How are they turned away"
(*Suratul Mu'min / 69*)

Concerning those obstinate fanatics who continue their contention and perversion, even after the appearance of the truth, it says:

يُجَادِلُونَكَ فِي الْحَقِّ بَعْدَ مَا بَيَّنَّ كَأَنَّمَا يُسَاقُونَ إِلَى الْمَوْتِ وَهُمْ يَنْظُرُونَ

"They argue with you about the truth after it has become clear, as if they are driven to death while they saw it."
(*Suratul Anfāl / 6*)

Freedom of Children

We have already said that compelling others to accept a faith is condemned in Islam which considers this a violation of the freedom of thought and belief. Now we must also say that Islam does not only forbid such a transgression, but it also condemns every step taken in this direction by other religious groups.

Therefore, as the underaged children are not sufficiently mature, they lack the readiness to accept a faith through intellect and reasoning. The religious freedom of committed minorities is not a reason for them to impose their own faith on their immature children, since, as we have said before, such an act is a transgression against right of freedom of thought and belief of the others.

Committed minorities should abstain from every illogical compulsion and propaganda as far as their children are con-

cerned and they should let them choose a faith after their coming of age through intellect and reasoning.

There is no doubt that a human being whose innateness is pure and free from mental pollution will himself find the right path and faith. Therefore, if a child is not subject to deviating ideas and suggestions and if his character is allowed to develop freely and naturally, and he does not lose his soundness and steadfastness, upon attaining maturity and growth, his innate nature, will reflect his true and proper faith and lead him towards truth.

This fact has clearly been stated in some verses of the Qur'an and in Islamic narrations and utterances of the religious leaders:

فَطَرَتَ اللَّهُ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا يَبْدِيلُ لِخَلْقِ اللَّهِ

"The natural disposition created by Allah. There is no change in Allah's creation." (Sūrat - Rūm / 30)

The Imam aṣ-Ṣādiq, explaining the above, says: "This unchangeable natural disposition is monotheism and Islam."¹

The Imam al-Bāqir quotes the Prophet saying: "Every newborn child is born with that natural disposition."²

Another narration tells us: "Every new child is born with the natural disposition, but its parents make a Jew or a Christian or a Magian of it."³

According to this fact, Islam considers it a great sin for religious groups to deviate and mislead innocent and pure children.

¹ *Uṣūlul Kāfi*, ch. On "Creating the creatures on monotheism".

² *Ibid.*

³ *Wasā'ilush-Shi'ah*, ch. 48 on *al-Jihād*, ḥadīth No. 3.

If the text of the treaty stipulates abstention from this act, every step taken by the committed minorities to compel children to follow their religion is considered a violation of the agreement and is punishable. The Imam Ali threatened the tributaries of Bani-Taqlib who had committed themselves in this respect, with severe punishment.¹

Freedom of Religious Rites and Ceremonies

Among the freedoms granted on the basis of religious freedom according to the Tribute Agreement to committed religious minorities, namely the Jews, the Christians and the Zoroastrians, throughout the Islamic realm, is their freedom to perform their religious rites and ceremonies.

They can benefit from this legitimate right of holding these rites and religious devotions in perfect security. By this privilege which the Muslims must fully observe, the said minorities are allowed to hold these ceremonies individually or in groups in their holy centers and no one has the right to molest them.

Of course, in case of some religious demonstrations, certain restrictions may be envisaged according to the articles of the Tribute Agreement. However, the freedom to perform religious rites is preserved for the committed minorities as an indivisible right.

This becomes clearer if we consider the spirit of the Tribute Agreement and the conditions of co-existence which are an inseparable basis of international treaties, and by a survey of the texts of treaties which were concluded by the Prophet

¹ *Kanzul 'Ummal*, Vol. 2, p. 304.

of Islam and the particular methods adopted by the religious leaders in this connection.

Security of Temples and Sacred Places

Undoubtedly, there can be no separation between respecting any religion and paying due respect to its temples and religious centers. This is a principle which is affirmed in the Tribute Agreement and its observance is the duty of all Muslims.

Thus all the temples and sacred places of the committed religious minorities are respected by the Islamic society and they enjoy perfect security and immunity. Any molestation of such centers by either the Muslims or non-Muslims is a punishable offense. Some jurists have even considered the entry of Muslims in the holy centers of the Jews and the Christians, even for the purpose of devotion pending on the permission of those in charge of these centers.

Irrespective of the exigencies of reciprocal agreements in regard to respecting those places where the Creator of the universe is worshipped, and in view of the fact that such centers are not placed on an equal footing with the temples of idolaters and polytheists, we have made a full survey of this matter in the texts of the Prophet's treaties which are absolutely explicit.

The Qur'an considers the protection of the places of worship as an objective of *jihad* a sign of legitimate defense, a result of social security and a product of co-existence between various nations. In this connection verse 40 of Suratul Hajj is worthy of notice:

وَلَوْلَا دَفَعُ اللَّهُ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفُتِحَتْ صَوَابِعُ رِيحٍ وَصَلَوَاتٌ وَمَسْجِدٌ
يَذُكَّرُ فِيهَا اسْمُ اللَّهِ كَثِيرًا وَلَيَنْصُرَنَّ اللَّهُ مَن يَنْصُرُهُ إِنَّ اللَّهَ لَقَوِيٌّ عَزِيزٌ

"Had it not been for Allah's repelling some people by some others, certainly there would have been pulled down cloisters and churches and synagogues and mosques in which Allah's name is much remembered; and Allah supports him who supports Him. Allah is strong, Mighty."

Newly-Founded Places of Worship

What has been said about the temples of committed minorities is a necessary and inevitable result of the Tribute Agreement, and thus, an overall preservation of the security of their sacred places and their property and endowments is a part of the Muslims' duties and responsibilities.

But the granting of further freedom such as establishing new religious organisations and founding new places of worship depend on conditions and texts envisaged in the Agreement.

Jurisprudents have divided Islamic realm into three divisions:

1. The lands which have been rendered habitable directly by the Muslims as well as the towns and villages build by them. Should the committed minorities reside in such areas, they are not to establish churches, cloisters, synagogues or temples since these lands belong to the Muslims and the minorities have no right to them. So, if the Jews, the Christians and the Zoroastrians take steps towards establishing such centers of worship without the consent of the Muslims, there will be no immunity for them on the part of the Muslims. In any case, such an act is illegal.

The late 'Allāmah Al-Hilli says in *Tadhīratul-Foqahā'*: "If an agreement is signed with the Muslims in this connection, it will have no validity."¹

The late Shaykh Ṭusi states this point more explicitly in his *al-Mabsūf'*:

"A Muslim leader cannot allow the tributaries to build churches, cloisters or other centers of worship in the said lands, and if such a treaty is concluded, it is null and void. There are no differences of opinion on this point." This verdict is also true of the lands whose inhabitants are converted to Islam."

2. The lands and countries whose inhabitants had engaged in war with the Muslims after the victory, these lands were forcefully occupied by the Muslims. According to the law of the *jihād*, such lands belong to all Muslims, and therefore, the above three religious groups may not build any churches or other places of worship there.

But with regards to the churches, synagogues and temples which have remained at the time of occupation of these towns and lands, they are considered intact according to the Tribute Agreement and enjoy perfect security and immunity.

Ibn-Abbass says: "No non-Muslim may build a temple in a town built by the Muslims, nor are they to toll the bells, drink wine or keep pigs. But a town built by non-Muslims and occupied in a conquest by Muslims, may enjoy all the privileges granted by the Agreement."

In addition to what Ibn-Abbass has stated, the late 'Allāmah al-Hilli resorts to the actual method of the

¹ *Tadhkiratul Fuqahā'*, Vol. , p. 446.

Prophet's Companions and other Muslims to affirm this view, and he considers the retaining of such temples in the Muslim lands as an unanimity of the Muslims about the maintenance of the such temples in the occupied lands. These arguments are put forth against the view of Shaykh Tūsi concerning the invalidity of the treaties which involve the maintenance of the said places of worship.¹

3. If before a conflict takes place, the people of a country, a town or the inhabitants of a region sign a treaty of peace with the Muslims according to which the lands are ceded to the inhabitants in return for a tribute alone, in such a case, the inhabitants of these places have the right not only to preserve their existing centers of worship, but they may also freely build new churches and temples.

If the peace agreement is such that the land is declared as a possession of the Muslims, and the inhabitants are required to pay tribute in return for their residence there and for the rights granted to them by the Tribute Agreement, they may only have the right to keep their existing places of worship, in peace conditions. As for the right to build new places of worship this depends on the conditions and articles explicitly stated in the peace treaty. If an agreement has been reached about it between the competent Muslim leader and the committed allies, then the question is settled. But if the agreement prohibits such a measure, then every step taken in this direction is condemned.²

¹ Ibid.

² Ibid.

Apostasy of Religious Minorities

To conclude this discussion, it is necessary to point out that the apostasy of the committed minorities and their change from one faith to another will automatically make the Tribute Agreement null and void and abrogate the individual or the group immunity granted by the agreement.

If the apostasy is in the form of conversion to Islam, they will then naturally benefit from the legitimate rights granted to all Muslims in an Islamic society. But if this change of faith is towards other than Islam, although there will be no prevention against them, on the basis of freedom of faith, yet they shall lose the privileges and rights granted by the Tribute Agreement having now accepted a faith which they had formerly declared invalid and wrong at the time of the conclusion of the agreement.

The Qur'an says:

وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ

"And whoever desires a religion other than Islam, it shall not be accepted from him, and in the Hereafter he shall be of the losers." (Sūratu 'Alī 'Imrān / 85)

The Prophet has explicitly declared that changing one's religion was a reason for withdrawing immunity:

«من بدل دينه فاقتلوه»

"He who changes his religion should be killed."¹

Some jurists consider the Tribute Agreement valid

¹ *Tadhkiratul Ahkām*, Vol. 2, p. 647. *Masālikul Alham*, Vol. 1, p. 491. *Jawāhirul Kalam*, Vol. 21, p. 314.

when apostasy results among the three religions such as conversion from Judaism to Christianity. They base their opinion on the idea that infidels are considered as one nation and are regarded equal by the tribute law in Islam.¹

We will discuss this matter further in chapter six of this book under the title, "The Indirect Violation of the Tribute Agreement."

3. Freedom of Dwelling

Freedom of dwelling and choice of residence in the case of the committed religious minorities mean that the said groups after acquiring citizenship through the treaty,¹ can, like other Muslims, choose their desired place as a permanent or temporary residence in the Muslim realm, and this right includes the freedom of leaving an Islamic country. But in the latter case, the Tribute Agreement will automatically lose its legal value and this kind of citizenship is naturally cancelled.

The question of freedom of dwelling for the committed minorities may be summed up under the three following principles:

1. There is no necessity for the above three religious groups to have a permanent residence, the choice of which depends on their own will, and there exists no imposed obligation in this connection except in exceptional cases where the conditions of the Tribute Agreement or the interests of both parties necessitate the choice of a particular residence for them.

¹ *Islam and International Rights*, p. 147.

2. The residence for an acquired citizen (committed religious minorities) may be several.
3. The residence for the said groups is not a permanent matter, and they can at any time change their residence or leave Muslim lands.¹

In view of what has been said concerning the freedom of dwelling, it becomes clear that the committed religious minorities are free to move about within the Muslim realm and to enter in, or depart from, the Islamic country. However entering the country depends on the conclusion of the Tribute Agreement.

Here we must point out that what is considered as freedom of dwelling and a necessary and inevitable part of the Tribute Agreement, which must be observed by the Islamic society, is the right of residence which, in some cases, may be limited and restricted.

Prohibited Zones

In three cases the freedom of dwelling is restricted in respect of the religious minorities.

1. In the case of the zones where the transit or stay of a person or persons of the tributaries is explicitly forbidden in the Tribute Agreement. Obviously as the Tribute Agreement finds its legal value due to the consent and signature of both parties, therefore the committed allies must respect its articles, including the article related to the prohibited zones.
2. Muslim mosques at any place and under any condition are among the zones where the tributaries have no right of

¹ Ibid., p. 198.

passage or residence and Muslims' permission in this matter is of no avail. Concerning the mosque of Mecca, jurists, both Shiite and Sunni are unanimous in their agreement on this point. But concerning other mosques of al-Hijaz and others, some Sunni jurists are of the opinion that the prohibition of transit and residence of non-Muslims in the said mosques is related to occasions when no permission has been obtained from the Muslims. But there is no difficulty in when permission is granted.

The late Shaykh Ṭūsī in connection to this view by the Shiite jurists says:

"The belief of the Shiite jurists is that the non-Muslims never have the right to enter into the mosques and no Muslim can grant such a permission to them."¹

To explain this point we must say that from the viewpoint of the Islamic jurisprudence, mosques call for special regulations which must be observed carefully even by the Muslims. For example the Muslim who is polluted with infectious filth, or if he is in a state of *janābah* or if he does in the mosque acts incompatible with worshipping, or obtrusive to the devotional acts of others, has no right to enter or stay in the mosque. Therefore, prohibiting non-Muslims from using Islamic mosques must not be regarded as a restrictive act which deny them freedom.

Moreover, the mosques belong to Muslims and are reserved for devotion and worship. Thus, the observance of Islamic regulations is not possible without believing in Islam.

The late 'Allāmah al-Hillī says that the deputies of religious groups cannot be received by the Muslim leader in the

¹ Ibid., p. 47.

mosque nor allow them to stay there.¹ The Shaykh Ṭūsī, although approves of such an act, adds in the end that the Muslims had better abstain from it.

Some jurists, supporting the former view allowing non-Muslims' entry into the mosque by means of official permissions, say: "The Holy Prophet had actually in some cases allowed non-Muslim religious groups to enter the Mosque. For example, he received the deputies of Thaḳīf in the mosque and permitted them to stay there. He also ordered Thumāmāh ibn Athāl to be tied to a pillar in the mosque, and allowed Banū Qurayzah and Banū Naḍīr captives to stay for some time in the mosque.

3. Al-Hijāz, which is divided into two parts from a legal and jurisprudential viewpoint: Part one: The *Haram* quarter which includes the city of Mecca and its suburbs. This zone enjoys great respect and importance since the first and greatest center of monotheism, Muslims' *Qibla*, the Holy Ka'bah and the Sacred Mosque are situated there, and also because it is the original cradle of the Islamic faith and the home land of the great Prophet of Islam where the first divine revelations were revealed. It is in fact the heart and center of the Islamic world and thus, it enjoys a particular security and immunity. For this reason, the name *Haram* (Sanctuary) is given to this zone.

As long as a Muslim lives in this zone, he enjoys security and immunity. All fightings and bloodsheds are forbidden there. Not only the human beings, but even the non-domestic animals are immune there. Killing of animals there is pro-

¹ *Tadhkiratul Fuqahā'*, Vol. 1, p. 445.

hibited and certain fines are imposed for such acts.

Concerning the *Haram* zone, jurists are unanimous that non-Muslims are not permitted to enter there for either transit or stay, but the Muslim leader may grant the right of transit to non-Muslims and if in such a permit the matter of payment of a duty is stipulated, it must be observed by those non-Muslims who pass through.¹

This regulation is also applicable to foreign envoys and non-Muslim messengers and missions who want to enter the zone to conclude an agreement. Therefore such missions and persons may engage Muslim individuals for this purpose, or the Muslim leader or his representatives may meet the above mission or persons outside the sacred zone.² According to this law, the committed religious minorities are forbidden to stay in the sanctuary and must obtain a permit for transit.

Part two: Other zones of al-Hijāz including al-Medina, Yamama, Yanbu'c, Kheybar, Fadak and neighbouring districts are also prohibited zones, with the difference that the non-Muslims are allowed to pass through for a duration not exceeding three days, but the right of residence belongs to the Muslims only. According to this law, the enforcement of which was strongly advised by the Holy Prophet in the last days of his glorious life, the committed religious minorities cannot stay in the land of al-Hijāz. But they can obtain entry permissions from responsible Muslim authorities into al-Hijāz for a limited period for the purpose of commercial activities or other legitimate tasks.

¹ *Al-Mabsūṭ*, vol. 2, p. 48. But ash-Shahid ath-Thāni in *al-Masālik*, says: "They are absolutely not allowed to enter the *ḥaram*."

² *Ibid.*

The late Shaykh Ṭūsi says:

"The tributaries may enter the land of al-Ḥijāz (with the exception of the *Haram*) without a permit, but they are not allowed more than three days' stay. They may move on from one town to another and stay three days in each town." In cases when their arrival is for the purpose of mediation, delivery of a message, conclusion of a treaty and the like, which are required by the Muslims, the permission granted them will be gratis. But if their arrival is for personal reasons or affairs which are not related to Muslims' interests and they apply for permission, this permit will not be given free of charge and they must pay a sum to be agreed upon by both sides. If an entry is made without official permission, responsible authorities may through a previous notice demand the required payment. In cases of indispositions, such as illness, which may prevent the departure of the tributaries from al-Ḥijāz, the stay permit may be granted for more than three days. If they die, they may be buried in al-Ḥijāz but if this death occurs in the *Haram* zone, their burial there is prohibited and the corpse of a non-Muslim must be carried outside the zone and buried there.

Although the non-Muslim women are exempt from concluding a tribute agreement and the payment of tribute and can benefit free of charge from all the privileges of the tribute agreement in the Islamic realm, yet they, like other individuals of the religious groups, are prohibited from entry and stay in al-Ḥijāz and the *Haram*. They must also obtain permission for entry and pay the afore mentioned sum.¹

In concluding this discussion, it must be said that in some

¹ *Tadhkiratul Fuqaha*, Vol. 1, p. 445. Refer also to Ch. 4 of this book.

narrations the Arabian peninsula has been mentioned as a prohibited zone, and accordingly, non-Muslims are to be expelled from it. Although jurists have fixed the limits of the Arabian peninsula to the lands situated between Aden and the Persian Gulf in its length, and between Tihāma and Syria in its width, as affirmed by al-Aṣma'i, Abu-'Ubayda and other *geographers* of the early Islamic centuries, yet they have declared that what is meant by the Arabian Peninsula is the land of al-Ḥijāz, since the Arabian Peninsula includes Yemen, whereas there is no prohibition for the residence of non-Muslims in Yemen which is confirmed by practice.

Judicial Independence

There is no doubt that the granting and recognition of a right or rights for people without a guarantee of execution cannot safeguard the desired goal and result. Therefore, although the rights of the committed religious minorities have been guaranteed through the Tribute Agreement, the right of judicial appeal for them in cases which must necessarily be redressed has been envisaged for them and they are allowed to benefit from this legitimate right in the following cases:

1. When the tributary is a plaintiff and the defendant is a Muslim.
2. When Muslim is a plaintiff and the defendant is a tributary.
3. When both parties of the dispute are tributaries (religious Minorities).

In the first two cases, the tributaries can apply to the Islamic judicial courts and the dispute is considered according to judicial laws in the Islamic courts and the verdict of competent judges is given. There will exist no discrimination in

the laws, verdicts and their execution. Religious minorities will be treated in the same way as Muslims. If the verdict of the competent Islamic court is against the Muslim, he must accept it as the tributary must.

In the third case, religious minorities, too, can plead to the Islamic courts for justice, but there is no compulsion on them. At the same time the Islamic courts are not compelled to accept their appeal.

Concerning the duty of the Prophet and other Islamic judges the Qur'an says:

فَإِنْ جَاءُوكَ فَأَحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ

"Therefore, if they come to you, judge between them or turn aside from them." (Suratul Mā'idah/42)

Jurisprudents have interpreted the phrase 'turn aside' to mean 'abstain from judgment between them.' In such a case, they should be referred to their own courts and not left to themselves in their disputes.¹ The late Muhaqqiq Ardebili says: "This view is accepted by Shiite jurists."²

A number of jurists have considered it obligatory for Islamic courts to accept the appeal of the committed minorities and it is a duty for them to hear their cases if they desire so.

In this view they rely on verse NO. 49 of Suratul Mā'idah:

وَأَنْ أَحْكُم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ

"...judge between them by what Allah has revealed," This

¹ Ibid., vol. 2, p. 652.

² *Ayātul Ahkām*, p. 392 (lithographic ed.)

considers judgment a binding matter, and they argue thereby that this verse abrogates the preceding verse. They have also given another reason: undoubtedly the removal of injustice is a binding duty for the Muslim leader, and judging between the tributaries, too, is one of the judicial duties of the Muslims.

But this reasoning is wrong because the Islamic courts can not forcefully summon the litigant parties to the court before the tributaries lodge an appeal for it. Therefore this verse has the same meaning as verse 42 of the same sūrah.

وَإِنْ حَكَمْتَ فَأَحْكُم بَيْنَهُم بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

"And if you judge, judge between them with equity, surely Allah loves those who judge equitably."

The purport of both verses is that if it is necessary to judge between the non-Muslim groups, then it should be according to justice and divine revelation, and thus the verse 42 of suratul Mā'idah does not refer to the duty of preliminary judgment. The phrase at the end of this verse, saying: *"And do not follow their whims"* is a good testimony to this fact, which is similar in meaning to the verse we quoted before, namely:

فَإِنْ جَاءُوكَ فَأَحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ

"Therefore, if they come to you, judge between them or turn aside from them."

Why Do the Islamic Courts Have an Option?

To find a definite answer to this question as to why the Islamic courts are free in accepting the appeal of the minorities or referring them to their own courts, we must resort to other verses of the Qur'an.

Verse No. 43 of *sūratul Mā'idah* gives us the following answer:

وَكَيْفَ يُحْكَمُونَكَ وَعِنْدَهُمُ التَّوْرَةُ فِيهَا حُكْمُ اللَّهِ تَعَرَّيْتَوَلَّوْا مِنْ بَعْدِ
ذَلِكَ وَمَا أُولَئِكَ بِالْمُؤْمِنِينَ

"And how do they make you a judge while they have the Torah wherein is Allah's judgement? Yet turn back after that, and they are not believers."

Thus the Qur'an expresses surprise at the Jews for appealing to the Prophet for justice, whereas they have the Torah, their religious book, in hand, and can see the verdict of Allah in it concerning their differences; but since these verdicts do not correspond with their desires, they come to the Prophet for justice though they have no faith in revelation and his divine Book and his prophethood. What kind of an appeal is this?

They would even turn aside from the Prophet's verdict if they found it contrary to their desires. They have no belief in their heavenly Book, the Prophet of Islam, his judgment and verdict, nor in anything at all. Accordingly the Qur'an has left it to the Islamic courts to decide whether to accept the minorities' appeal or not, so that they would accept the appeal if they felt that the verdict given by the court would be considered binding by the litigant parties. But if they realise that there exists evil intention, disbelief and plots against the

verdict of the court, they can refuse the appeal.

Fair Judgement

In any case, the Islamic courts have the duty to judge fairly in the disputes and differences between the non-Muslim groups, as they do in the case of the Muslims, and avoid every unjust discrimination and partial judgement.

The Qur'an gives an emphatic command to the Prophet of Islam in this connection.

وَإِنْ حَكَمْتَ فَأَحْكُم بَيْنَهُم بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

"And if you judge, between them with equity; surely Allah loves those who judge equitably." (Sūratul Mā'idah / 42)

وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

"And when you judge between people, you judge with justice." (Sūratun-Nisā' / 58)

فَأَحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ

"Judge between them (followers of books) by what Allah has revealed, and do not follow their whims." (Sūratul Mā'idah / 48)

فَأَحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَى

"So judge between men with justice and do not follow the whim." (Sūratu Sād / 26)

Thus religious minorities can with assurance refer to the

Islamic courts to settle their differences and benefit from the impartial verdicts of Muslim judges. The Muslims and their judges are duty-bound not to transgress over the limits of justice, and the ill conduct and tyrannical acts of some individuals of the minorities should not cause the Muslims to do injustice or resort to retaliation.

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا كُوْنُوْا قَوِّمِيْنَ لِلّٰهِ شٰهَدَةً بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَتٰنٌ
قَوِّمِيْنَ عَلٰۤى اَلَّا تَعْدِلُوْا اَعْدِلُوْا هُوَ اَقْرَبُ لِلتَّقْوٰى وَاَتَّقُوا اللّٰهَ اِنَّ اللّٰهَ خَبِيْرٌ بِمَا تَعْمَلُوْنَ

"O you who believe, be upright for Allah (and) bearers of witness with justice, and let not hatred of a people incite you not to act equitably. Act equitably, that is nearer to piety, and guard against Allah's wrath. Surely Allah is aware of what you do. (Sūratul Mā'idah / 8)

Third View

Another view is expressed concerning the appeal of the non-Muslim groups to Islamic courts according to which Islamic courts are bound to accept the appeal of the committed religious groups for justice, whereas they can refuse the appeal of the uncommitted allied groups.¹

The supporters of this view resort to the following argument:

The Tribute Agreement and joint treaty which is concluded between we the Muslims and the three religious minorities, make it necessary for the Muslims to take the required step in removing every injustice and redress their legitimate rights of life, property and honour.

Undoubtedly, the performance of such a duty in the case of

¹ *Tafsirul Manār*, Vol. 6, p. 394.

the disputes between the said groups is not possible except through submitting them to the Islamic courts and the fair judgment and settlement of such cases.

Upon this reasoning they claim that the verse which says: "*Therefore, if they come to you, judge between them or turn aside from them.*" is not applicable to the tributaries, but to other non-Muslim allied groups. This is supported by the purport of the verse which was descended about the Jews around al-Medina, since the Jews of Banū-Naḍir and Banū-Qurayzah meant by the verse were allies but had not concluded a tribute agreement with the Prophet.

Replying this argument, the late Muhaqqiq Ardebili says:

"Firstly, the purport of the said verse shows, in connection with the verses coming before and after, that it is related to the tributaries. Secondly, the removal of injustice whether from a Muslim or a non-Muslim is an obligation whether we are committed to defence or not. Thirdly, if we refer the litigant parties to their own courts, they will not be treated unjustly either by us or by their own courts, since such an assignment corresponds with their view, and thus it is made binding for them."¹

To explain the first part of the answer given by the late Muhaqqiq Ardebili, we must add that though the Jews of Banū-Naḍir and Banū-Qurayzah paid no tributary and joined the allies of the great Muslim society by means of the first treaty concluded in the early days of the Prophet's migration to al-Medina, yet the treaty concluded by the Prophet with the said Jews contains the same legal results as a tribute agreement, and the Prophet had guaranteed the immunity of

¹ *Ayatul Ahkām*, by Ardebili, p. 392.

the Jews against every danger and aggression.¹

The View of the Shiite Jurisprudents

The Shiite jurisprudents have declared, in support of the above verse "*Therefore, if they come to you, judge between them or turn aside from them*", that the acceptance of the non-Muslim groups' appeal, whether committed or not, depends on the discretion and judgement of the Islamic courts and the Muslim judges and have refuted the compulsion of the Islamic courts in judgement, in the same way as the compulsion of the tributaries in appealing to the Islamic courts, is refuted.

Muhaqqiq Ardebili and other Shiite jurisprudents, while quoting the above ash-Shāfi'i's view have considered it in agreement with that of the Shiite jurisprudents and there is a unanimity of opinion on this matter. The late Jaza'iri says: "Our narrations, too, confirm this point."²

Shaykh Ṭusi quotes Abū-Baṣīr who quotes the Imam Muḥammad al-Baqir saying:

"When the followers of the Torah and the Gospel come to the judge for trial, he has the option whether to judge between them or not."³

On the basis of the above reasons, the Shiite jurisprudents admit no difference between the religions of the litigant groups in their disputes. Whether they follow the same creed or a different one, they are considered equal before the Islamic courts, and in both cases the court can abstain from

¹ *Qalā'idudurar*, by al-Jazā'iri, p. 378 (Lithographic ed.)

² *Tadhīb al-Ahkām* quoting the former reference.

³ *Ibid.*

hearing them.

Some of the Sunni jurists believe that when the litigant parties belong to different creeds, the Muslim judges are duty-bound to judge between them for the litigant parties do not recognise their own religious courts, and are not willing to be tried in a court opposed to their religion. In such a case the dispute between them may produce mischief and injustice.

But considering the explicit purport of the verse No. 42 of *sūratul Mā'idah*, it must be said that in both cases the verdict of the verse is the same, and the above reasoning could be correct if the view which is opposed to the acceptance of the minorities' appeal is rejected, whereas according to the view of option, in cases where the refusal of litigant parties to be tried in their own courts may produce disturbances, mischiefs or injustice, the Islamic courts will accept their appeal for the sake of social expediency. The above reasoning is not therefore incompatible with the view of the Islamic courts' option with regards to the minorities' appeal, and is in perfect agreement with it.

This option is also true in a case where one side of the litigant parties is a tributary and the other side, an ally or a member of uncommitted groups. Similarly if both sides are allied, or immune or uncommitted, the right of option for the reasons mentioned before is preserved, and in no case the Islamic judges are forced to accept any appeal without the need of an expediency.

The Jews' Pleading for Justice in the Prophet's Presence

During the life of the Prophet, the Jews of al-Medina repeatedly came to the Prophet for judgment and the settlement of their differences. There was no agreement among the Jews of al-Medina about the punishments of adultery and blood-money, which led to many disputes among them. The Jews of Banū Naḍir who relied on their own power, nobility and superiority, demanded full payment of mulct from the killers. But the Jews of Banū Qurayzah who were weaker could only collect half of the sum. Thus when the slain and slayer belonged to two different tribes, there naturally arose clashes between them resulting in very unpleasant happenings. So in order to settle the old-standing disputes, both parties begged the Prophet for arbitration and verdict. The Prophet, relying on the principle of equality and rejecting every discrimination and force, issued the verdict that the killer, disregarding his tribe must make full payment of the blood-money to the concerned tribe.¹

Freedom of the Minorities in Choosing the Courts

In spite of having the right of appeal to the Islamic courts, the religious minorities also enjoy the right of freedom in the manner of pleading, that is to say, they can abstain from taking their case to the Muslim courts and submit it to their own judicial and religious authorities. Thus we may say that Islam has preserved the right of judicial independence for its allies.

¹ *Tafsirul Manar*, Vol. 6, p. 394.

In the first and second cases where the right of a Muslim is in question, obviously there is no necessity of referring to the non-Muslim courts, and differences are settled impartially according to the just laws of the Islamic courts.

Islam considers this right of pleading and judicial independence, whether explicitly stipulated in the text of the tribute agreement or not, a necessary and legitimate right of the allies and religious minorities residing in the Islamic realms, and formally recognises the verdicts issued by the minorities' judicial courts in the above cases.

In fact this should be considered a privilege rather than a right and respect for freedom, since the granting of such a right is an admission to a kind of internal independence for the non-Muslim groups within an Islamic society, whereas today, independent countries avoid, as far as possible, granting such a privilege to the aliens.

Capitulation

Capitulation is a term used for treaties according to which a foreign government is granted some rights of sovereignty in another country, the most important of which is the right of judgement and enforcement of punishment from which the citizens of the foreign government benefit. Capitulation is an unusual state of affairs which is incompatible with independence and national prestige and contrary to the principles prevalent among civilised, independent and free nations.¹

In view of what Islam has resolved concerning the judicial independence of the religious minorities (who are not formal citizens of the country), the legal value of the system of ca-

¹ *Special International Rights*, pp. 91-94.

pitulations becomes clear, since such a treaty in so far as it corresponds with the above Islamic laws, is a legitimate right which has been given a legal value by means of the tribute agreement.

The only point to be added here concerning capitulation is related to the offenses and their penalties which do not correspond at all with the Islamic penal laws and regulations of the tribute agreements. For if the religious minorities commit such acts in the Islamic realm which are considered an offense by Islamic penal laws and for which certain punishments are envisaged, they will be punished according to these Islamic laws. There is only one exception to this, namely, when the said act is permissible in their religious creed and it does not cause any damage to the others, and also if such a case has not been stipulated in the text of the tribute agreement. Moreover, if one of the litigant parties is a Muslim, no court but an Islamic one is competent to try them.

International Court or Arbitration

Regarding relation among nations, the world of today considers international arbitration as a peaceful means of removing differences between governments. Article 38 of the first Hague agreement of 1907 declares:

"International arbitration means the settlement of disputes between governments through arbitrators chosen by them, who judge on the basis of respect for legal principles."¹

Thus a person or persons selected for this purpose act as impartial judges between the two hostile parties, and both sides must, with good will, carry out the issued verdict.

¹ *General International Rights*, Vol. 3, p. 140.

Such an arbitration has been envisaged in the law of Islam and is actually practised in some disputes between Muslims and non-Muslim groups.¹ Examples of this is seen in the arbitration of Sa'd ibn Ma'adh who was chosen by both the Prophet and Jews of Banū-Qurayzah. Likewise the arbitrations, agreed upon in the battle of Siffin.

The system of the selected arbitration is not only accepted by Islam as a means of peaceful settlement of international disputes, but also in the system of local differences. According to this system, both sides are allowed to choose a person as arbitrator, and thus remove the need of referring to the official courts. Such a person is called the 'arbitrating judge' by the Islamic jurisprudence.

It should, however, be remembered that in the law of Islam, only a single person may be chosen for arbitration possessing the merits and qualifications for judgement and he is to judge on the basis of truth and equity.

The Qur'an says:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ
النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

"Surely Allah commands you to hand over the trusts to their owners and that when you judge between people, you judge with justice, surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing." (Sūratun - Nisā / 58)

The Qur'an rejects the arbitration of incompetent and un-

¹ The detailed discussion concerning the international arbitration system in the Islamic law is out of the original aim of this book. An expanded discussion of same will separately be presented later to the concerned readers.

fair persons and forbids pleading by such false judges:

يُرِيدُونَ أَنْ يُتَحَاكَمُوا إِلَى الظَّالِمِينَ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ

"They desire to litigate to the taghut though they were commanded to deny him." (Sūratun / Nisā / 60)

Another Privilege

The religious groups living in an Islamic realm under a Tribute Agreement and having differences with Muslims, can in so far as the conditions of the Tribute Agreement and reciprocal commitments permit, benefit from the law of arbitration. This is possible if a demand for arbitration is made before applying to judicial courts of the Muslims. But once the verdict of the competent Islamic court is issued concerning the dispute in question, the confederates must respect and obey it according to their undertaking in the Tribute Agreement. For as we stated in chapter four, the acceptance of, and respect for, the Islamic laws and regulations of Muslim courts is a definite duty of the committed religious groups and they cannot disregard this responsibility. In personal disputes, too, even when one of the parties is a Muslim, they may agree upon Muslim courts and choose a person or persons to arbitrate and settle their differences.

5. Freedom of Economic Activities and Commercial Relations

Islam attaches much importance to economic activities and commercial matters as a vital necessity on which depends the individual and social interests and has in many cases emphasised the expansion of legitimate economic activities.¹ Islam considers it a duty for all individuals to engage in such tasks which provide individual livelihood and turn the wheels of society, and has even considered it recommendable to expand such activities beyond the limit of urgent needs.²

Islam does not allow a person to leave his job and abandon economic activity and as a result become a burden on the society or on other individuals. In such cases, religious leaders have greatly reproached such persons.³ Whenever the holy Prophet met a young man, he began by asking him about his job and profession. If he was jobless, the Prophet used to turn away from him, but if he was active and industrious

Wasā'ilush-Shi'ah, Vol. 12, chs. 7, 10 and 25.

Ibid., chs. 4, 9, 15, 20, 21-23.

Ibid., chs. 5 and 18.

he encouraged him, saying that the worth of a human being depended on his job and profession.

Those who give up work in order to engage in worship and spiritual matters are not acting according to the method of moderation in Islam. Islamic leaders have declared about this matter:

"Those who abandon the world for the sake of their hereafter, are not of our followers."¹

"Make so much effort while you are living as if you will live forever, and endeavour so much for your salvation on the day of Resurrection, as if you will depart the next day"²
"Wealth is a good aid to piety."³

Islam has not only realistically considered economic activities as a natural and legitimate right of the human beings, but also as a duty and necessary matter for the survival of man, family and society. This matter does not apply only to the Muslims and the Islamic society, but also to the allies and non-Muslim groups who become members of the Islamic society, since, according to the law of the tribute agreement, the committed minorities are allowed to engage in economic and commercial activities, and cooperate in the economic development of the Islamic society, and in these tasks they benefit from security and freedom.

Ownership right of the Committed Minorities

The general order of the Islamic economy is based on the

¹ Ibid., ch. 28, *hadith*. 1.

² Ibid., *hadith*. 2.

³ Ibid., *hadith*. 3.

principle of ownership and respect for individual ownership, and accordingly, all kinds of economic activities, trade and deals have been arranged on this basis. This system is applicable and recognised without any fundamental change with respect to the non-Muslim allies in the Islamic society (the committed religious minorities). Thus, their right of ownership is immune and respected legally like that of the Muslims. As we have already stated about the first responsibilities of the Islamic society concerning the commitments of the tribute agreement, the life, property and honour of the tributaries are perfectly secure and protected by the Islamic society.

The right of owning land, too, is preserved for the minorities, and they can own land, buildings and other kinds of property through legal dealings. On the basis of respect for private ownership, Islam does not allow any interference in the property of the committed minorities, and any such interference in the property of the tributaries depends on the latter's previous agreement and assent. This applies to both movable and immovable property.

Freedom of Commerce

In the secure environment which is created through the conclusion of the tribute agreement between the Muslims and the other religious groups, Islam permits every kind of economic activity including commerce for these minorities and guarantees their freedom in this field.

What is worthy of notice is that the meaning of freedom of commerce is not that religious minorities have the right to engage in every type of commercial activities. It rather means

that Islam does not compel them to follow its economic regulations. They can engage in such activities according to the regulations of their own creed.

But when one party of a deal is a Muslim, the transactions which are not in accord with the Islamic criteria will not be formal and valid from a Muslim's point of view. In such deals both parties must agree to make it conform with the Islamic economic rules.

As a free economic relationship usually necessitates a kind of proximity and friendly understanding, it will produce desirable results from an Islamic viewpoint. In practice most of the Muslims' successes and rapid progress of Islam in various societies were due to such contacts, and commercial relations have been an effective factor in the expansion of Islam as revealed by Islamic history.

Usury is Forbidden

It is stipulated in some of the treaties that the Prophet had concluded with the religious groups of his time that the allies must abstain from usury. Though this condition which was agreed upon by both sides seems to place a limitation on the absolute freedom of traders and merchants of religious groups, yet it must be remembered that the importance of this matter is due to its being a part of the decisive policy of combatting usury adopted by Islam in the economic system of the Islamic society.

The dangers and evils of the system of usury are too clear to need further explanation, since this ruinous economic mischief, which is dragging the deadly feverish world economy towards death, is the cruelest type of colonization and the

most disgraceful kind of profiteering imposed upon actively productive classes and a factor of many misfortunes in various aspects of social life resulting in the destruction of the economic relations and productive activities.

Islam has considered it necessary to fight usurers to the extent of declaring war on them on behalf of Allah.¹ Such a decisive combat is not seen in any Islamic prohibitions, except in polytheism. Thus we see that fighting usury is on the same level as fighting polytheism which is an ultimate goal of Islam. To uproot this economic cancer, Islam has not only resorted to a negative aspect, but has also positively fought it by making use of profitable methods.

The Qur'an considers the prohibition of usury as a permanent law of all divine religions, and for this reason the Jewish usurers are strongly berated and threatened with painful divine punishment.²

Therefore the emphasis laid on the prohibition of usury in the text of the tribute agreement is nothing but an agreement upon abstaining from an illegitimate act which both sides have considered as an offense. Thus such religious restrictions include no imposition.

Moreover, disregarding the inevitable urgency which necessitates the prohibition of usury under all conditions, and conniving at the fact that this prohibition is in accord with other divine creeds, this point should not be forgotten that Islam, with its realistic vision and its profound estimation of the dangers and deadly and ruinous losses that usury brings, cannot remain indifferent to such consequences which

¹ Re: *Sūratul Baqarah*/278 and 279.

² Re: *Sūratun-Nisā* /161.

threaten the Islamic society through a system of commerce adopted by the Muslims' allies.

There is no doubt that Islam is interested in the soundness of the economy of the Islamic society, therefore it has the right to prevent the pollution of this economy. On the other hand, freedom of usury for the minorities, who are members of the great Islamic society and whose economic activities are related to, and mingled with those of the Islamic society, would naturally and irreparably endanger the economic soundness and order of this coalescent society. Therefore the Muslims have the right to prohibit an anti-human system of usury for both sides in the treaties they conclude with the religious minorities.

Agriculture and Farming

The Minorities are free to engage in agriculture and farming on the Islamic lands, the same as the Muslims. The lands that the tributaries use for such activities may be acquired through purchasing or renting from the Muslims or the government. In some cases the land is turned over to them as private possession according to the terms of the tribute agreement. The advantage that the tributary farmers have over the Muslims is that the latter must pay a special tax called *zakāt*, whereas the former are exempt from it and they only pay the tributary and in the case of the tribute lands, the tributary paid by the tributaries stands for the rent of the land given to them by the Islamic government for cultivation.

Free Economic Relations

It should be remembered that the guarantee of freedom of

commerce and economic activities is combined with freedom of economic relations. The Muslims are allowed to establish free economic relations with the said groups. The only restriction for the Muslims in this connection is related to the dealings and transactions which are prohibited by the Islamic law and announced by it be invalid.

For example, a Muslim cannot engage in the transaction of such forbidden commodities as pigs, alcoholic beverages, musical and gambling instruments, or participate in illegitimate acts. These regulations are not confined to the economic relations of the Muslims with the religious minorities, but they are general and universal.

Thus the Muslims may deal in the needed commodities with the tributaries and lease to them any property or rent from them. They may form partnership with them for commercial activities and take or give loans, and establish economic relations through mortgage, deposit, crop sharing, compromise, limited partnership, attorneyship, surety, money orders and the like. The Muslims may also employ them or be employed by them for legitimate tasks.

In view of such free and friendly relations in the Islamic society between the Muslims on the one hand and the religious groups on the other, it must be pointed out that in this society, there is no question of a select minority or any discrimination among the members of the bigger Islamic society. All the members including Muslims, committed Jews, Christians and Zoroastrians act as compatriots and as one nation, as it is called in legal terminology, to co-operate sincerely for strengthening the economic and social structure of their united society. The practical method adopted by the

Holy Prophet in his relations with the allied Jews and Christians is a good example of this economic, social and political scheme of the tributary law at an international level. The Prophet carried on transactions with the Jews of al-Medina and received loans from them. The Imam Ali had similar dealings with the tributaries to the extent of hiring himself out to them in farming as a wager. He made no distinction a Muslim and tributary in this respect.

Trade Taxes and Duties

As tributary traders are free in choosing and practising their commercial dealings, they also are quite free in choosing their site for such activities in any town or district. As said before, they pay no tax other than the tributary and their commercial goods are not liable to tax or duty in transportation.¹ The only restriction imposed on the tributaries is their entry into al-Hijāz zone which point we have already explained. Here we may add that the issue of official permit of entry for the tributary merchants by competent Islamic authorities to this zone is possible on the payment of a special duty which must be effected annually by tributary traders.

Shaykh Tusi gives the following explanation about this matter:

"If the tributaries engage in trade in the Islamic lands except in al-Hijāz, they face no molestation since trading is free for them. They can stay in the place of their choice as long as they wish. As for al-Hijāz zone they must not enter the sanc-

¹ The question of custom duties and taxes etc., are out of this book. The commercial obligations of the tributaries follow the general economic policy of the Islamic state.

turary zone. As for the other parts of this zone, they may not enter them without an official permit. If they do, they will be liable to punishment. But this punishment should not end in death or captivity due to their conclusion of a joint treaty with the Muslims. When they enter al-Hijāz with an official permit, their intention is subject to inquiry. If their entry is for the purpose of such matters that are in accord with Muslim interests such as the delivery of a message or acting as deputy for concluding tribute agreements, or carrying provisions needed by the Muslims, they may enter al-Hijāz without paying duties. But if their entry has nothing to do with the Muslim interests, or if they intend to engage in commerce in al-Hijāz, they may not do so without paying entrance duties.

If the tributaries enter al-Hijāz without a permit and without the payment of duties, they will be required by the Muslim leader to pay the duty as is the case with those who have a permit. Some jurists are of the opinion that in such cases the tributaries are exempt from the payment of obligatory duties. This view has won a strong support and the reason given is that since they have had no commitment in this matter, they are not liable to such payments. It is also said that they are to be treated in the same way as the Muslims are in non-Muslim countries.

If the tributaries engage in trade in al-Hijāz zone, they have to pay an annual tax according to the terms of the commercial treaty concluded by them, and there is no difference of opinion among jurists concerning this matter. But if the uncommitted minorities who have no pact with the Muslims engage in trade, it is advisable to require them to pay

trade duties every time they enter an the Islamic country, as there may not be a second time.¹

Taxes on Land Transfer

On the basis of freedom of commerce in land transfer, in so far as there is no political danger, no legal check exists for such transfers between the Muslims and the committed minorities. Land transfer in the form of buying and selling or other ways, which would give the right of possession to the committed minorities is permissible, subject to the official regulations for transactions. But according to the regulations of the (*Khums*) in such cases of land transfer, the tributaries must spend one-fifth of it for the purposes envisaged in the said regulations.

Jurisprudents have considered this duty on purchased land by a tributary as something obligatory in the Islamic jurisprudence. But if this transfer takes place in a way other than purchase, the matter is questionable and doubtful. As a caution, they have recommended that the Muslims should stipulate in the act of transfer that the tributary buyer should pay the one fifth tax. They may also agree that the Muslim seller should pay this tax at the time of the transaction. In such a case the tributary buyer will be exempt from this payment. But when the seller does not commit himself to this payment, and the tributary buyer refuses to pay this tax and transfers the land to another tributary or to another Muslim including the original Muslim seller, this one-fifth tax must be paid. In a case too, of rescission or annulment of the deal by the buyer and seller, this law holds good and the *Khums* must be

¹ *Al-Mabsuf*, Vol. , p. 49.

paid by anyone who takes possession of the land.

Even if the tributary buyer converts to Islam after the purchase of the land, he will not be exempted from paying the said tax.

The above duty is related to land transfer, but when the transaction is related to a building and the like, the transfer of land is dependent on it.

Although some Shiite jurists have considered the *Khums* as a definite matter,¹ and others have even claimed unanimity.² Other jurists, such as the author of *al-Madarak* and ash-Shahid ath-Thani have considered the tributaries exempted from the *Khums* on land purchase.³ Although the 'Allamah al-Hilli, in his *Tadbkiratul-Fuqahā'* has considered the payment of the *Khums* obligatory from the Shiite viewpoint, he has declared in *al-Mukhtalif* that past jurists such as Ibn-Juneyd, Selar, al-Mufid, Ibn Abi 'Aqil and Abu-Salah said nothing of this type of tax.

The only evidence of this verdict is a narration of the Imam as-Sādiq quoted by Abu 'ubayda al-Hadhhdhā', who said: "When a tributary purchased a land from a Muslim, he will have to pay the *Khums*". In this narration the land referred to is a land on which a ten percent tax has already been imposed. When it is purchased by a tributary, another ten percent is added making a total of twenty percent tax, i.e. the *Khums*. Therefore, it is likely that the question of the *Khums* is not a fixed sum to be paid by the tributary, but a kind of tax which is within the powers of the competent Islamic

¹ *Tadbkiratul Fuqahā'*, Vol. 1, p. 253.

² *Ghunya* quoting *Miṣbāḥul Faqih*, Kitābul Khums, p. 132.

³ *Ibid.*

authority.

Freedom of Jobs

In addition to commercial and economic activities, religious minorities are free to choose any job or profession which is not contrary to the tribute agreement and does not cause mischief and disorder in the social system of the great Islamic allied society. The types of jobs and professions for the committed religious minorities include productive and industrial occupations, Medicine, teaching and the like. Although the right of engaging in these professions is a part of the tribute agreement which the Muslims must guarantee, yet its details and cases are subject to changes to be agreed upon in the text of the agreement.

Thus this right is preserved for the Muslims in cases of expediency and according to the judgment of the leader of the Muslims to close the door of some of these professions to the committed religious minorities. Such an exception and limitation may also be made in commercial and economic matters, to be stipulated in the text of the agreement in the interest of the Muslims and the Islamic society with regards to tributary individuals or groups in their economic or commercial activities. But when such matters are not stipulated in the agreement, the religious minorities will have full freedom in these activities and in the choice of professions.

6. The Execution and Recognition of the Minorities' Civil Rights

The minorities who have joined the great allied Islamic society through a tribute agreement, are not bound to follow the Islamic laws concerning their civil rights, such as marriage, divorce, inheritance etc. The laws and regulations which are in this connection enacted by the said three creeds are recognised by the judicial and executive organisations of the Islamic society, and the followers of these three creeds may act according to the laws of their own respective religions.

What is meant by the laws and regulations of the said three creeds are those laws which are at present recognised by the followers of these religions, even though they may be contrary to the true divine laws and regulations of the said creeds.

Laws of Marriage of Non-Muslims

Every religion and nation has of course special laws for marriage with certain legal vestiges. Even those groups who do not follow a particular religion and have no religious be-

liefs, have devised certain rules for marriage which they follow.

Islam's realistic attitude always regards such facts and evaluates them and consequently in this case it has, without any prejudice, recognised the laws and traditions of various groups and creeds which are accepted by them concerning marriage contracts.

The Allamah al-Hilli says in this connection: "The marriage of the infidels is legally right, and their status remains intact on the basis of that marriage even when they are converted to Islam or when they appeal to an Islamic court for justice."¹

In the Qur'an, in the *surah of Abu Lahab*, where Abu-Lahab and his wife are berated for their hostile acts, verse 4 says: "*And his wife, the bearer of kindling.*" In this verse there is an implied recognition of the propriety of the marriage between Abu-Lahab and his wife, in the same way what is stated in another *sūrah* the legality of marriage of Pharaoh is recognised.

We may say in support of the above view that the non-Muslim men and women who appeal to the Islamic courts in their marriage problems, are tried according to the marriage laws of their own creeds since such a marriage is legally acceptable. If both of the non-Muslims couple convert to Islam, their marriage will be considered legitimate as before, since if it had not been legitimate before conversion, no change would be legitimate after their conversion.

Some Sunni jurists, such as Mālik, say: The marriage of infidels is not valid since they have not observed re-

¹ *Tadhkiratul Fuqaha*, Vol. 2, p. 648 and 650.

religious laws and verdicts, but because of the agreement, a non-Muslim couple are not sentenced to separation when they appeal to Islamic courts, and if they convert to Islam, their marriage is legally recognised as an extenuation and pardon. Some other Sunni jurists claim that the marriage of the infidels before their conversion to Islam is neither wrong nor right.¹

But the Shiite jurists believe that the marriage contract of the infidels if made according to their official criteria, is considered proper by the Muslims, and there is no distinction here between the followers of heavenly books, idolaters and others. If the couple convert to Islam, their marriage is considered legitimate as before, unless that marriage had been concluded in a way contrary to Islamic criteria such as incestuous marriages.²

A well-known tradition says: "Every people have their marriage [custom]", is a reference to the fact that marriage law is bound within the customs and traditions of peoples and nations, and it is recognised except incest which has found recognition by some tribes and people inspite of its strict prohibition in the Islamic law.

Consequently all the committed religious minorities have the right to follow their own laws and traditions in respect of marriage. Such marriages which accord with the said laws are formally recognised by the Islamic courts and executive authorities and, according to the *hadith*: "Bind them by what they had bound themselves," all the differences that are taken

¹ *Al-Fiqh 'alal Madhahib al-Arba'ah*, Vol. 4, p. 200.

² *Wasilalun-Najat*, Vol. 2, p. 256. *Tahrirul Wasilah*, Vol. 2, p. 422. *Tadhkiratul Fuqaha'*, Vol. 2, p. 648.

to the Islamic courts or courts of arbitration¹ are settled according to the laws of their own creeds.²

Marriage of the Minorities with Muslim Women

Marriage is a law of human creation and one of man's natural and instinctive desires. Islam considered it as an inviolable right of the committed religious minorities. As we have already said, Islam considers legal the marriage of the minorities which have been concluded according to their own laws. But at the same time, in the Muslim marriage law, this right and freedom has been limited to members of the same religion. Muslim women are not allowed to marry non-Muslims men. According to the same law, the marriage of the non-Muslim men even if they are committed tributaries is forbidden with Muslim women and such a marriage is considered an offense. In cases where in accordance with tribute agreement, the abstention of the tributaries from molesting Muslim women proposed and conclusion of marriage with them has been forbidden, the said offense makes the agreement null and void.

In order to base marriage on an authentic spiritual foundation and make the joint marriage life mentally harmonious, peaceful and based on co-operation, Islam believes in an equality of a man and woman to make marriage real. But this equality is not measured by apparent and material criteria. Therefore, wealth, rank, lineage, race, family status, social

¹ On this subject refer to the chapter on "Judicial Independence" in this book.

² Ibid.

position and the like do not determine the equality of a husband and wife. The only criterion for the equality of the couple in Islam is faith and belief, and this principle makes a man worthy of, and equal to,¹ a Muslim woman, and vice versa.²

This fact should not be forgotten that in married life a woman is subordinate to a man's will owing to a number of psychological and social reasons. Even if we do not accept this fact as something natural, we cannot deny it as customary in many marriages in most social environments.

Naturally Islam cannot ignore this fact and be indifferent to its consequences. Allowing the marriage of a Muslim woman with a non-Muslim means being indifferent to the Muslim woman's belief in the face of the danger that threatens her. It also opens the way for her deviation towards infidelity and thus a large number of Muslims would face apostasy. Obviously this bitter fact is wholly contrary to the authentic goals of Islam and cannot be accepted by a religion which claims to have universal mission.

A Wife's Conversion to Islam

When the wife of a non-Muslim converts to Islam, the legal aspect of the marriage changes in this way that if from the time of the wedding until the conversion of the wife no sexual intercourse has taken place, the said marriage contract is automatically nullified, and from moment that the woman

¹ *Sharā'i'ul Ahkām wa Jawahirul Kalām*, the book of marriage, the first question of the contract's supplement.

² The Qur'an refers to this question by saying: "And wed not (believing women) to idolaters until they believe; for certainly a believing slave is better than an idolater, even though he should please you." (2:22)

is converted, the previous marriage loses its legal vestiges. But if the wife is converted to Islam after defloration, her non-Muslim husband is given a period of grace to decide to separate or continue the marriage with his Muslim wife.¹ If he, too, converts to Islam, the marriage becomes automatically legal, unless it has been of a kind forbidden by the law, such as an incest, in which case it is nullified together with its vestiges. But if he remains non-Muslim at the expiry of the grace period, the marriage is considered nullified as from the date of his wife's conversion.

According to some jurisprudents, the tributaries have a greater advantage in this matter, that is, when the wife converts to Islam and her husband remains non-Muslim, the marriage contract remains intact to the extent that he can stay with his Muslim wife during the day, but they must sleep separately at night.²

To support this view, these jurisprudents have relied on the following *hadith*:

1- Jamil ibn Darraj quotes the Imam Muhammad al-Bāqir or the Imam Ja'far aṣ-Ṣadiq through a friend's narration, saying:

"If the wife of a Jew or of a Christian or of a Zoroastrian converts to Islam but not the husband, their marriage contract remains intact, but they will not be allowed to leave the Islamic land."³

2. Muhammad-ibn-Muslim quotes the Imam Muhammad al-Baqir, saying: "The marriage of the followers of the heav-

¹ The said period, according to the *hadith* and the jurists' statements, is the same as that for divorce grace.

² *Sharā'i'ul Ahkām*, The book of marriage, ch. 4.

³ *Wasā'ilush-Shi'ah*, Vol. 14, p. 420.

only books and all those who have a tribute agreement with the Muslims remains legal if one of the couple is converted to Islam. But the husband has no right to take his Muslim wife out of the Islamic realm, and they cannot sleep together at night, though in daytime they are allowed to resume their common life. But in the case of the polytheists such as the Arab idolaters etc., their marriage is suspended until the termination of the grace period. If by that time the husband has converted to Islam, his Muslim espose will remain his wife. But if he has not, or if converted after the expiry of the time limit, they must separate and husband will have no claim on his Muslim wife."¹

Most jurisprudents have weakened this view and have expressed doubt about both the above *hadiths* owing to the fact that they had been quoted as "*mursal*"² *hadiths*, some of whom are unknown. To prove their view, they have relied on the following *āyahs* of the Qur'an and other Traditions to show the identical verdict issued on the tributary couples, and on non-tributary couples:

لَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا

a. "God will by no means give the disbelievers a way against the believers." (suratun - Nisā' / 141)

لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ

b. "Neither these (women) are lawful for them, nor are

¹ Ibid., p. 422. *Tahdhibul Ahkam*, Vol. 2, p. 439 (Lithographic ed.).

² A *mursal hadith* is that whose claim of narrators is interpreted.

they (men) lawful for them (women.)" *sūratul Mumtahinah* / 10)

وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْنَهُنَّ الْأُجُورَهُنَّ

c. "Hold not to the marriage ties of the disbelieving (women)." (*Sūratul Mumtahinah*/10)

d. Ahmad-ibn-Abi Nasr says: I asked the Imam-Riḍa about a man whose wife was a Christian converted to Islam, whether he could live with her. He said: "If the wife has converted to Islam, she is not allowed to live with her infidel husband. I repeated that the husband had converted to Islam after sometime, and asked if the marriage was intact. He answered: 'Never unless a new marriage contract must be concluded between them.'¹

e. Some jurists, including Shaykh Ṭūsī in his *al-Khilāf* and ask-Shahid ath-Thāni in his 'Al-masālik' claim that the Shiite jurists are unanimous about the correctness of the above proofs.

But Shaykh Ṭūsī, in spite of his verdict concerning the absolute invalidity of the above marriage after the expiry of the time limit, offers the opposite view in his books of *an-Nihāya*, *at Tahdhib* and *al-Istibṣār*, saying that the marriage remains intact after the tributary wife converts to Islam.

¹ *Masālikul Afhām*, p. 490. *Wasā'ilush-Shi'ah*, Vol. 14, p. 417.

Conversion of Both Esposes to Islam

When both non-Muslim esposes convert to Islam, undoubtedly their marriage remains intact from the Islamic viewpoint, unless this marriage is incestuous, or if it is polygamous with more than four wives, and the like which are contrary to the laws of Islam. In the first case, they must separate, and in the second case the newly converted husband must choose up to four of his wives, while the marriage of the other wives will be null and void.

In cases which do not correspond with the law of nullification, no question is asked about the marriage, and the Islamic courts must consider the marriage of the newly-converted couple legal and correct, to whatever creed they had formerly belonged.

When the Husband Converts to Islam

When the husband converts to Islam, and the wife remains unconverted, the following two cases arise:

1. The wife is a follower of the three creeds of *ahlul kitāb*.
2. She may be the follower of some other religion.

In the first case the marriage is considered legal and the newly-converted husband can continue to live with his wife who is a follower of one of the above creeds, except if she is of the Zoroastrian creed or a near relative to her husband, in which cases the marriage is not recognised.

In the second case, if the husband's conversion has taken place before going into her, the marriage is nullified; and if it as taken place after that, the marriage is recognised on condition that the wife, too, converts to Islam by the end of a time limit. It is however nullified if she refuses to convert

to Islam.

Apostasy of the non-Muslim Couple

With the apostasy of one of the tributary couple, if their marriage is illegal in their creed, their marriage is broken off. But in cases where this marriage is considered valid by their co-religionists after the apostasy of one of the couple, some jurists have affirmed its legality, while the majority of the jurists consider the marriage of the apostate null and void, since in Islam apostasy is fundamentally rejected and results in lifting immunity. Ash-Shahid ath-Thani argues in his *Al-masālik*: "Our verdict of invalidity is quite wrong since in the above case one of the couple is a follower of a religion according to which their marriage is legal, therefore, although the other apostate has no life-immunity so, as long as he is alive there is no reason to nullify the marriage.

Marriage of Muslim Men With Non-Muslim Women

Muslim men are forbidden to marry non-Muslim women who are not followers of the creeds of Moses or Christ. Islam is quite explicit on this point.

The two following *āyahs* describe the above law with perfect clarity:

وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ تُؤْمِنَ

1. "And do not marry the idolatresses until they believe."
(*Sūratul Baqarah* / 221)

وَلَا تَنْكِحُوا بَعْضَ الْكُوفِرِ

2. "And hold not to the ties of marriage of the unbelieving women." (*Sūratul Mumtahinah* / 10)

Marriage of a Muslim man with Jewish and Christian Women

Different views are expressed in the books of jurisprudence concerning the marriage of a Muslim man with Jewish and Christian women, the most well-known of which is prohibiting preliminary permanent marriage, and permitting a temporary one. Some jurists, such as aṣ-Ṣaḍuqayn and Ibn Abi 'Aqil have absolutely, allowed it and ash-Shahid ath-Thāni, in his *masālik ul Afhaw* and *Masālikul Afhām* the author of *Jewāhirul-Kalām* were inclined to support it. The arguments offered for this view is as follows:

The *ayah* No. 5 of *sūratul Mā'idah* explicitly permits the marriage with the women of *ahlul kitāb*, and considers it similar to marrying a Muslim woman:

وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ

"And the chaste from among the believing women and the chaste from among those who have been given the Book before you."

As for the narratives, some of them denote an absolute permission, while others forbid it. In some narratives it is allowed in case of exigency¹ and in other narratives it is permitted with the simple-minded women of *ahlul kitāb*² and in

¹ *Wasā'ilush-Shi'ah*, Vol. 14, p. 412.

² *Ibid.*, p. 414.

others, as a temporary marriage,¹ and lastly when the husband converts to Islam while the wife remains a Jew or a Christian, their marriage remains intact.² In several other narratives, the marriage of a Muslim with a Jew or a Christian woman is allowed in case he has no Muslim wife.³ In another narrative the prohibition is conditioned that his Muslim wife would not permit him to marry a Jewess or a Christian woman.⁴

The supporters of the prohibition view base their argument on the above two *āyahs*⁵ forbidding marriage with the polytheistic and infidel women, and concerning the *āyahs* which is depended upon by the believers in the permissibility of the marriage,⁶ is relied on for believing cite a number of narratives⁷ to believe that the two said *āyahs* have abrogated the *āyah* No. 5 of *sūratul Mā'idah*, and they support their argument by the purport of the said narratives.

But those who support the view of absolute permissibility, have rejected the subject basing their argument on the fact that *sūratul Mā'idah* was the last revealed *sūrah* of the Qur'an, consequently, this *sūrah* may abrogate earlier *sūrahs*, but not itself. Moreover the Prophet had ordered the Muslims to consider what is *ḥalāl* in this *sūrah* is *ḥalāl* and what is *ḥarām* in it is *ḥarām*.⁸

¹ Ibid., p. 415.

² Ibid., p. 416.

³ Ibid., p. 418.

⁴ Ibid., p. 415.

⁵ *Sūratul Baqarah*/221 and *Sūratul Mumtaḥamah*/10.

⁶ *Sūratul Mā'idah*/5.

⁷ *Wasā'ilush-Shi'ah*, Vol. 14, p. 410.

⁸ The Prophet is quoted to have said: "*Sūratul Mā'idah* was the last revealed of the Qur'an. So, allow its *ḥalāl* and forbid its *ḥarām*." At-

Moreover Sayyid Murteḍā, in his treatise, the *Mubkam and the Mutashābih* has quoted the Imam Ali saying that the āyah in *sūratul Mā'idah* abrogates the āyah 10 of *sūratul Mum-tabinah* and 221 of *sūratul Baqarah*. The first āyahs of *sūratul Mā'idah* too, testify to the fact that this sūrah completes the Qur'an and contains the last divine commands and laws. The opening part of the said āyahs says:

الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حَلَالٌ
 لَكُمْ وَطَعَامُكُمْ حَلَالٌ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ

Today (all) the good things are allowed to you, and the food of those who have been given the book is lawful for you and your food is lawful for them; and the chaste from among the believing women " (*sūratul Mā'idah* / 5) Shows this matter not to be abrogatable.¹

Another point is that if we consider the term "polytheist" to cover *ahlul kitāb*, the said āyahs will not contradict each other, and so the āyah of *sūratul Mā'idah* will act as a confirmation, whereas according to the prohibition theory one

Tabrasi, quoting al-'Ayyashi according to his authorities, and 'Isa ibn 'Abdullah, quoting his father on the authority of his grandfather, quoting Amirul Mu'minin (A.S.) to have said: "The Qur'an used to abrogate some of its āyahs, and this was received from the Prophet (S.A.), then the last revelation was *Sūratul Mā'idah* which abrogated the previous (relevant) āyahs, but itself was not abrogated. It was revealed to him while he was on a gray she-mule, and the revelation was so heavy that she stopped and her stomach hung down till I saw her naval almost touched the ground, and the Prophet (S.A.) fainted, putting his hand on Shaybah ibn Wahab ibn al-Jumāhī. Then the Messenger of Allah (S.A.) came to and recited to us *Sūratul Mā'idah*. So, he acted accordingly, and we did, too.

¹ By observing the word "this day" which matches the same as in the previous āyah, the subject will be explained.

has to accept the abrogation. When there is a doubt between confirmation and abrogation, undoubtedly confirmation has priority.¹

Although this discussion requires further elaboration, here the size of the book compels us to refer the reader to our treatise, *Risālatul-Wajīza* which discusses the matter at length.

The Divorce Law

The present Torah, as is now available to the Jews and the Christians considers divorce permissible except in the following two cases:

1- When the husband claims that his wife had not been a virgin at the time of concluding marriage and her father displays the sign of her virginity.²

2- If a man rapes a virgin he must marry her and can never divorce her.³

Among the divorce verdicts in the Torah is that if a man divorces his wife because of a defect and expels her from his house, she can choose a husband for herself. But if she separates from the second husband, the first husband cannot marry her for the second time, and he is considered an unclean man.⁴

In the Gospel we come across the following points about divorce:

"The Pharisees came to Jesus to test him and asked him:

¹ This principle is a basic rule which had been so much discussed. For more explanations refer to *Jawāhirul Kalām*, the relevant chapter.

² *Al-Hudā ilā Dinil Mustafā*, Vol. 2, p. 289.

³ *Old Testament*, Deuteronomy, 22-29.

⁴ *Ibid.*, 24.

Can a man divorce his wife for any reason? Jesus answered! Have you not read that He who created first, created a man and a woman. For this reason a man leaves his father and mother and joins his wife and both make a single being. Therefore, after this unity, they are no longer two, and man cannot separate what God had united." They asked: "Why then did Moses will that a woman should be released by means of divorce?" Jesus answered: "Moses allowed this because of your hard hearts, but it was not so at first. I tell you now, whoever divorces his wife, for other than adultery, then marries another woman is an adulterer.¹ According to these texts, the Christians believe the man who divorces his wife is not allowed to remarry, and the divorced wife cannot remarry. Divorce is only allowed in case of adultery.

As a matter of fact such questions have been studied by some of the Christian leaders for the purpose of modifying these laws, which are still among the problems facing the Court of the Vatican.

In any case, the divorce, regulations like the law of marriage, is carried out according to the belief and creed of the minorities, and whatever is done in this connection will be legally valid. In cases of any differences in these matters, the problems are settled in the minorities' courts, and as we said before, they can also refer to the Islamic courts to settle their disputes.

Inheritance Law

Religious minorities, owing to their relationship through lineage and marriage, act according to their own law in mat-

¹ Mathew's, ch. 19, 2-10.

ter of inheritance and such ownerships are respected.

In the inheritance law, as in the current Torah, the share of inheritance of a deceased's son is two times that of the deceased's¹ brothers, and when there are brothers, no share is given to the daughters. When the deceased is childless, his brothers receive the inheritance, and if there are no brothers, the heirs will be the deceased's uncles, and if no uncle exists, near relatives will be the heirs.²

When minorities submit their differences in the matter of inheritance and its sharing to the Islamic courts, those persons who are related to the deceased by marriage or near relatives can have no share in the inheritance.³ But some jurists have permitted this inheritance to parental relatives, even if it is through incestuous marriage.⁴ Other jurists have considered both the lineage and the marriage relatives⁵ entitled to inheritance whether the marriage was proper or improper by incest, if the matter is accepted as correct by both beguether and heirs.⁶

¹ *Old Testament*, Deuteronomy, 1-7.

² *Ibid.*, Number 21, 8-12.

³ *Furū'ul Kāfi*, Vol. 7, p. 145. *Sharā'i'ul Ahkām, Jawāhirul Kalām, Tahdhibul Ahkām.*

⁴ *Ibid.*

⁵ Lineage relatives are those who have blood relationship, and the other group are relatives by marriage.

⁶ According to this opinion, if the heir is a relative by both lineage and marriage, inherits on this basis, similar to the Magian Law concerning the man who marries his mother, if the wife dies, he will inherit her as a son and as a husband. For further details refer to *Jawāhirul Kalām and Tahdhibul Ahkām*, Vol. 2, p. 438.

7- Moral and Social Relationships of Muslims with the Minorities

The subject of free moral and social relationship which are necessary for the individuals and groups in the social life of a society, is another important matter which must be studied in the survey of the legal effects of a tribute agreement.

The Peaceful environment and conditions of co-existence which are automatically created as a result of the conclusion of a tribute agreement between the minorities and the Muslim society, necessarily result in a series of free moral and social relationships. This is one of the most significant results of the tribute agreement which allows religious minorities to live alongside the Muslims as committed allies and as members of the greater Islamic society.

Consequently, such free moral and social relationships are inevitable in the social life of the minorities with Muslims, and this is the direct result and legal exigency of that agreement. Our discussion here is confined to the limits and qualities of these relationships to show the extent to which this freedom expands and in what cases it is restricted.

Expression of Moral and Human Feelings

Islam considers all mankind as human beings, from whatever group of religion they may be and as belonging to the same root and as a single Ummah. On the other hand, it regards moral feelings, fine human emotions and virtues as necessary for every perfect human being, and the possession of these noble qualities as a requisite of true Islam and obedience to the Qur'an.

The school of ethical and spiritual education of Islam is based on these two principles. They have been employed in founding the moral and social organisations of the Muslims on an international level.

Every Muslim who is educated in this school expresses these moral feelings and fine human emotions, not for the sake of individuals or because of his own interests in his relation with others; nor does he follow this ethical school as an artificial and empty pretention, but as something deep, real and dynamic from the depth of his soul, manifesting itself in his acts and conduct towards others. Such noble qualities have become a part of the nature of a person educated in the moral school of Islam and have become an unavoidable second nature.

Thus it becomes easy to describe a social scene in which these educated individuals have joint responsibilities in turning the wheels of a big society where those who have similar convictions and allied committed groups co-operate.

The prospective of such a society will be a model human one in which the relationship of individuals is based on the loftiest moral and human characteristics which act as the lu-

bricating grease for the social machine, resulting in the acceleration, propriety and right production of the whole system of the allied Islamic community.

A Muslim is benevolent, kind and sympathetic in his social relations, possessing the quality of fine demeanor, gentleness, pity, flexibility, purity, sympathy, chivalry, optimism, honesty, sincerity and love for serving his fellow-creatures. He shows no trace of violence, oppression, injustice, cruelty, quarrelsomeness, ambition, ingratitude, unmanliness or being a time-server. He is not only so with his co-religionist, but this is a natural revolutionary result of having been educated by the moral and educational school of Islam.¹

Social Customs

In their relations with the committed religious minorities, Muslims do not only act according to moral principles and human duties, but also expand good relationship to the extent of respecting the customs and traditions of minorities. As they visit their co-religionists in time of illness and help them in difficulties, they behave in a similar manner towards minorities, not only towards the living but also towards their dead, and do not abstain from paying the customary tributes.

The holy Prophet whose words and acts are models and examples for all Muslims and criteria for the Islamic injunctions and duties, acted in the following manner with the religious minorities who were under Muslims protection: He visited the sick, took part in the funeral ceremonies of their

¹ To be brief we refrain from stating the *ayahs* and narratives concerning the details of the Islamic ethics. The reader may refer to the relevant books on ethics and ethical *hadiths*.

dead, received visitors cheerfully, sympathised with them, and attended their feasts.¹ For example on the death of Abdullah-ibn Ubay a friend of and a collaborator with the Jews of al-Medina, and a stubborn enemy of Islam, the Prophet attended a mourning session which was held by the Jews and expressed his condolences to the deceased's sons and to the Jews.²

Jabir-ibn-Abdullah says: "A funeral procession passed near us. The Prophet rose and we, too, stood up. We said: 'O Messenger of Allah. This is the corpse of a Jew.' He answered: 'Is it not the corpse of a human being? Stand up to show respect whenever you meet a corpse.'"

The Imam as-Şadiq saw a man in one of his travels who had fallen helpless and exhausted in a corner. He said to his fellow-traveller: "I think this man is thirsty. Go and give him some water." His friend went to the man but returned soon. The Imam asked if he had quenched the man's thirst. He answered: "This man is a Jew whom I know." The Imam said in astonishment and anger: "So what? Isn't he a human being?"

Dr. Duncan Greenleaz writes: "The great nobility and indulgence of this religion (Islam) which approves of all divine creeds will always be considered a fine heritage of humanity and upon such a foundation indeed can a universal faith be laid."

Observance of Social Etiquettes

In their social contacts with the minorities, the Muslims observe the rules of etiquettes and customs which are signs of

¹ *Ruhud-Dinil-Islami*, p. 262 (The Spirit of Islam).

² *Islam and Peaceful Co-existence*, p. 105.

mutual respect. From an Islamic viewpoint, differences of opinion and belief are no excuse for disregarding the rules of sociability and co-existence. Islam believes in a reciprocal right in social contacts and even in being fellow-travellers, and the observance of such rules is the moral duty of a Muslim with a respectable non-Muslim in travel and elsewhere. When the Prophet of Islam, the highest personality of this faith on meeting the envoys of Najran Christians, takes off his cloak and as a sign of respect and observance of custom spreads it under their feet, the duty of every Muslim becomes clear in observing such rules, for, the conduct of the leaders of religion is an example for us all, as is shown in the following story:

In the days when the Imam Ali was the ruler of the whole Islamic realm except Syria, Kufa was the capital of this powerful government. One day the Imam on his way to Kufa came across a man of a religious minority. Their way being partly the same, they agreed to be travelling companions. The distance was covered soon with talk and discussion. When they reached a cross-road, the man noticed that his travelling companion did not take the road leading to Kufa and continued to accompany him. He asked in surprise: "Did not you say that you were going to Kufa?" His companion answered in a friendly manner: "Yes". The man, who was not satisfied with this answer, asked again: "Why then are you coming this way? The road to Kufa is the other one."

The Imam Ali, with a friendly tone, said: "I want to escort you for a part of the way. Our Prophet has said that when two people become travelling companions, they will have a claim upon each other. Now, you have a claim upon me, and for

that reason I will escort you a few steps and will then resume my own way."

The man who was either a Jew or a Christian, moved like the one who has discovered truth, said: "Oh! It must have been your Prophet's generous nature which enabled him to win such an influence and power among the people to spread his faith so quickly in the world."

That man's amazement reached its height when he discovered later that his travelling companion had been none but the powerful caliph of the time, Ali-Ibn-Abi-Ṭalib. He was so overcome with deep emotions that eventually he became one of the most loyal and devoted friends of the Imam Ali.¹

Favour and Benevolence

In addition to all the rights and privileges that the religious minorities have in the united Islamic society, they are also treated with favour and benevolence by the Muslims. The idea that benevolence must be shown only towards a Muslim co-religionist is not compatible with an Islamic attitude. It is rather considered a universal conduct towards all those who have no quarrel with the Muslims, from whatever creeds they may be, since such a conduct is worthy of a human being.

The Qur'ān, describing this, says:

لَا يَنْهَى كُرَّ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ
مِنْ دِينِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

"God does not forbid you respecting those who have not made war against you on account of your religion, and have not driven you out of your homes, that you show kindness

¹ *Uṣūlul-Kāfi*, Vol. 2, p. 670 (quoting *Dāstān-e Rāstān*, Vol. 1, p. 12).

and deal with them justly." (Sūratul Mumtahinah/8)

Kindness and benevolence to the religious minorities include financial assistance, too. Indigent and aged Jews, Christians and Zoroastrians who cannot earn a living, are supported from the public fund, and the united Islamic society has the duty to render assistance to such needy persons who are Muslims' allies.

The Imam Ali, on coming across an old and feeble Christian ordered that the man should be granted an allowance from the public fund. When he was told that the man was a Christian; he answered in annoyance: "As a young man you made use of him in work, now as he is old and weak, you deprive him of help and kindness?"¹

Remission and Indulgence

In the establishment of good relations between the Muslims and the religious minorities and the creation of the most peaceful conditions of co-existence, Islam does not only instruct the Muslims to avoid improper conduct and rough treatment, it recommends kindness, beneficence, and friendly co-operation, and it even goes a step farther to say that in cases of improper conduct and violence or unfriendly attempts on the part of the tributaries, the Muslims are warned against retaliation and undesirable reactions, and they are asked to assume indulgence and remission and to show fortitude towards their rancour and unpleasant behaviour.

Concerning a number of the Jews and the Christians who wished to mislead the Muslims and were envious of Islam's advance, the Qur'an makes the following recommendation:

¹ *Wasā'ilush-Shi'ah*, Vol. 11, p. 49.

وَدَّ كَثِيرٌ مِّنْ أَهْلِ الْكِتَابِ لَوْ رَدُّوكُمْ مِّنْ بَعْدِ إِيمَانِكُمْ كَمَا رَاحَتِ
 مِّنْ عِنْدِ أَنْفُسِهِمْ مِّنْ بَعْدِ مَا بَيَّنَّ لَهُمُ الْحَقُّ فَاعْتَرُوا وَأَصْفَحُوا حَتَّىٰ يَأْتِيَ اللَّهَ
 بِأَمْرٍ يُؤْتِيهِ اللَّهُ عَلَىٰ كُلِّ شَيْءٍ قُدْرًا

"Many of ahlul kitāb wish they could turn you back into disbelieves after that you are believing out of envy from themselves, even after that the truth had become manifest to them; nevertheless, pardon and forgive (them) until Allah brings about His command; Allah is capable of (doing) everything" (Sūratul Baqarah / 109)

And in another *āyah* it gives a general instruction, preferring pardon and remission to revenge:

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوِفْتُمْ بِهِ، وَإِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِلصَّابِرِينَ

"And if you punish, then punish the same as you had been punished, but if you bear patiently, it will certainly be best for the patient." (Sūratun-Nahl / 126)

Many fine examples of pardon and connivance are reported from the Prophet towards the Jews of al-Medina, showing his deep interest in preserving good relations with the allies of the Muslims. Once an attempt was made by a Jew on the Prophet's life in the House of the Jews, by offering poisoned food disregarding their joint agreement, the Prophet did not allow the slightest punishment for this serious crime.¹

On another occasion, 'Ā'ishah, the Prophet's consort, was sitting by him when a Jew entered and instead of the customary salutation of *"as-salāmu 'alaykum"* he said: *"as-sāmu 'alaykum"* (death to you). Soon after another Jew arrived

¹ *Uṣūlul-Kaḥfī*, Ch. On Forgiveness, *ḥadīth* No. 9.

using the same expression. This showed that there was a plot by the Jews to hurt the Prophet. 'Ā'ishah cried in anger: "Death upon you and...." But the Prophet advised her to keep silence and said:

"O 'Ā'ishah, Refrain from abuse, since abuse, if embodied, assumes an ugly shape, whereas gentleness and fortitude make things beautiful and embellish them, while their absence diminishes their beauty. Why was you angry?"

'Ā'ishah, who was surprised at the Prophet's fortitude, said: "O Messenger of Allah, you not see with what impudence and shamelessness they abuse you instead of greeting you?" The Prophet answered: "Just *wa'alaykum*" (and to you) is enough."¹

In some cases the impudence and shamelessness of some minorities who enjoy privileges under the Muslims protection, had gone beyond the limit, and this insolence was not only shown to ordinary Muslims but also towards Muslim leaders. But this rancour did not prevent the Muslims from acting upon their duties on the basis of their joint agreement and conniving at hostile behaviour.

You have read two examples of this connivance by the Prophet. Now we offer you another example of this conduct in an encounter between a non-Muslim and the Imam Muhammad al-Bāqir (A.S.), the fifth Imam of the Shiites. In order to insult the Imam, the man said: you are the Baqar (a cow).² The Imam very calmly replied: "I am not a Baqar, my

¹ *Wasā'ilush-Shi'ah*, Vol. 2, p. 212 (quoting *Dastān-e Rastān*, Vol. 1, p. 111).

² The Christian misused the word "Bāqir", which is derived from "baqar", which means: "to cleave", as he use its other meaning, i.e. "cow".

name is Bāqir." The non-Muslim, instead of feeling ashamed, began to insult the Imam insolently and said: you are the son of a woman who was a cook." The Imam simply said: "That was her job. Work is no disgrace."

The man showed more impudence and said: "Your mother was black and" The Imam, without getting angry said: "If all these things you ascribe to my mother are true, may Allah forgive her, and if they are a pack of lies, may Allah forgive you for your falsehood and imputation."

Seeing so much forbearance on the part of a man who was in a position to punish the man severely, was enough to produce a radical spiritual change in that man and attract him towards a creed which has educated such a great personality and lofty character. Not long after, this man knelt before this divine and humane school and became a Muslim.¹

Showing Affection and Friendship

In view of what has been related about the moral and social relationships of Muslims with the religious minorities, there would be no need for further explanation that Muslims are never prevented from showing kindly and friendly behaviour to their allies. The *āyah* No. 7 of *sūratul Mumtāhinah* states:

عَسَىٰ اللَّهُ أَنْ يَجْعَلَ بَيْنَكُمْ وَبَيْنَ الَّذِينَ عَادَيْتُمْ مِنْهُمْ مَوَدَّةً

"It may be that Allah will cause friendship between you and those of them you treated as enemies" (sūratul Mumtāhinah / 7).

¹ *Bihārul Anwar*, Vol. 11, p. 83.

Two points require an explanation here:

1. The degree of kindness and friendship towards the minorities depends completely on their attitude towards the Muslim faith and their actual behaviour towards their Muslim fellow-creatures. Those groups which are closer to the Islamic thought, action and character, and show a mutual friendliness with the Muslims, naturally receive more affection and friendliness from them, as the following *ayah* of the Qur'an reveals:

لَتَجِدَنَّ أَشَدَّ النَّاسِ عَدَاوَةً لِلَّذِينَ آمَنُوا الْيَهُودَ وَالَّذِينَ أَشْرَكُوا وَلَتَجِدَنَّ
 أَقْرَبَهُمْ مَوَدَّةً لِلَّذِينَ آمَنُوا الَّذِينَ قَالُوا إِنَّا نَصْرُكَ إِنَّكَ يَوْمَئِذٍ
 فِي بَيْتِكَ وَرَهْبَانَانَا أَنَّهُمْ لَا يَتَّخِذُونَ

"And you will certainly find the nearest in friendship to those who believe, those who say: We are Christians; this is because there are priests and monks among them and because they do not behave proudly." (sūratul Ma'idah / 82)

In this brief but meaningful sentence, three factors are mentioned as the reason for the closeness of the Christians and their greater friendship:

First Factor:

Some of the Christians are priests who are the clergymen and the theologian of Christianity. The presence of such people among the Christians is the great factor in effecting closer ties of friendship between the Christians and the Muslims, since as clergymen they are well aware of the matters of religion and its facts and truths. Islam, which relies only on intellect and reasoning, can benefit greatly by these learned men of religion, whereas those who lack spirituality, knowl-

edge and perception cannot understand the truth of the Islamic faith as it is.

Past history, too, testifies to this fact. The first groups which were converted to Islam, following their survey and investigations, were Christian priests and men of learning, and their conversion was qualitatively of great value to Islam which is a religion of intellect and reasoning.

On the other hand it is clear that when there exists a greater degree of knowledge and spirituality, there will be less prejudice, enmity, rancour, violence, anti-human and anti-logical behaviour. Thus the presence of such men of religion and knowledge proves very beneficial in the establishment of good friendly relations. Naturally, pseudoclergymen are out of our discussion.

Second Factor:

Another factor for closer friendship between the Muslims and the Christians is the group of monks and ascetics who have given up worldly motives and mundane interests for the sake of devotion and service to God. The reason for this is clear since they are very close to truth and are better prepared to encourage the spirit of friendship and the elimination of rancour and enmity. Knowledge and practice are two strong pillars of the happiness and progress of every society.

Third factor:

Having no pride, arrogance or obstinacy against truth undoubtedly manifests a greater readiness to accept the truth and reality and cause flexibility of co-existence with others.

2. What is meant by affection and friendship here is not a

true friendship which has its source in intimacy and uniqueness of will and desire, since such a matter is not possible in view of differences of ideals, beliefs, attitudes and goals; and Islam has never suggested this type of friendship.

What we understand from the Islamic teachings is to disregard these differences in the social contact between the Muslims and the minorities, and not to abstain from friendly expressions and conduct.

But Islam does not only reject that kind of friendship which involves loss of personality and independence, or acceptance of others' domination, or xenophilism and reliance on non-Muslims, but is strongly opposed to it and warns the Muslims against its consequences.

Self-Surrender and Xenophilism

The goal of joint pacts and tribute agreements and its legal vestiges have never been intended that the ideological identity and intellectual and actual personality of one or both sides should be sacrificed for the sake of co-existence. Although Islam believes that the conclusion of joint agreements may pave the way for logical and wise development of the Islamic belief among the opposing groups, yet Islam does not regard such pacts as the means of a scheme for destroying such groups or consider such a motive as the direct and legal result of the treaties.

The conclusion of a joint treaty which is based on mutual agreement is in itself, an evidence of the recognition of the identity and personality of the other groups. This is true of both Muslims and non-Muslims.

An agreement which may endanger the entity, personality

and independence of Islam and Islamic society, or is used as an excuse for the penetration of foreign policy, has no validity. It never allows the Muslims to lose their intellectual and spiritual identity for the sake of the allies and the committed religious groups, and become so united with them as to follow their ways and accept their domination.

Islam strongly rejects such a friendship and forbids the Muslims from engaging in such a treason. Here we may see what the Qur'an says in this connection:

وَدَّ كَثِيرٌ مِّنْ أَهْلِ الْكِتَابِ لَوْ يَرُدُّونَكُمْ مِن بَعْدِ إِيمَانِكُمْ كُفَّارًا

"Many of ahlul kitāb wish that they could turn you back into disbelievers after your faith." (sūratul Baqarah / 109)

وَدَّتْ طَّائِفَةٌ مِّنْ أَهْلِ الْكِتَابِ لَوْ يُضِلُّوكُمْ وَمَا يُضِلُّوكُمْ إِلَّا أَنفُسُهُمْ وَمَا يَشْعُرُونَ

"A Party of ahlul kitāb desire that they could lead you astray, and they lead not astray but themselves, and they do not perceive." (sūratul Āli 'Imrān / 69)

يَأَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا عِبَادَةَ مِن دُونِكُمْ لَا يَأْتُونَكُم بِبَالٍ وَدُوا مَا عَنِتُّمْ قَدْ بَدَتِ الْبَغْضَاءُ
 مِن أَفْوَاهِهِمْ وَمَا تَحِضِي سُدُّوهُمْ أَكْبَرَ قَدْ بَيَّنَّا لَكُمُ الْآيَاتِ إِن كُنتُمْ تَعْقِلُونَ ﴿١١٥﴾
 هَاتَمْتُمْ أَوْلَاءَهُمْ وَلَا يُحِبُّونَكُمْ

"O you who believe, do not take for intimate friends from among other than your own people; they do not fall short of inflicting loss upon you; they like what distresses you; Vehement hatred has already appeared from out of their mouths, and what their chests conceal is greater still; indeed, we have made the āyahs clear to you, if you could reason. Look, you do love them while they do not love you." (Ibid. / 118-119)

يَأْتِيهِ الَّذِينَ مَأْمُرُوا لَتَنْجِدُوا عَذْرَى وَعَدُوُّكُمْ أَوْلِيَاءُ تَلْفُوتُكَ إِلَيْهِمْ بِالْمَوَدَّةِ وَقَدْ كَفَرُوا بِمَا جَاءَكُمْ مِنْ
 الْعَزْمِ فَرِحُوا بِالرَّسُولِ وَإِيَّاكُمْ أَنْ تُوَاعُوا بِالْقَوْلِ رَبِّكُمْ أَنْ كُنْتُمْ تَرْتَضُونَ فِي سَبِيلِ وَآيَاتِهِ مَرَاتِقُ
 نُفُورًا لِلَّذِينَ بِالْمَوَدَّةِ وَأَنَا الْغَرِيْبُ مَا الْخَفِيْتُكُمْ وَمَا أَعْلَمْتُمْ وَمَنْ يَفْعَلْهُمُ يَكْفُرْ بِمَا كَفَرُوا سَوَاءَ السَّبِيلِ

"O you who believe do not take my enemy and your enemy for friends: Would you offer them love while they deny what has come to you of the truth?" (sūratul Mumtahinah / 1)

إِنْ يَشْفَعُوا لَكُمْ فَاذْعَبُوا أَعْدَاءَكُمْ وَيَسْطُورُوا إِلَيْكُمْ أَيْدِيَهُمْ وَأَلْسِنَهُمْ بِالسُّوَى وَوَدُّوا لَوْ تَكْفُرُونَ

"If they find you, they will be your enemies, and will stretch forth towards you their hands and their tongues with evil, and they ardently desire that you may disbelieve." (Ibid / 2)

مَا يَوْدُ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَلَا الشُّرِكِينَ أَنْ يُنَزَّلَ عَلَيْكُمْ
 مِنْ خَيْرٍ مِنْ رَبِّكُمْ وَاللَّهُ يَخْتَصُّ بِرَحْمَتِهِ مَنْ يَشَاءُ وَاللَّهُ ذُو الْفَضْلِ الْعَظِيمِ

"Neither those who disbelieve from among ahulul kitab nor the polytheists like that any good should be sent down to you from your lord." (sūratul Baqarah / 105)

And lastly in the āyah 7 of sūratul-Tawbah / 8:

كَيْفَ وَإِنْ يَظْهَرُوا عَلَيْكُمْ لَا يَرْقُبُوا عَلَيْكُمْ إِلَّا
 وَلَا ذِمَّةً يُرْضُونَكُمْ بِأَفْوَاهِهِمْ وَتَأْبَى قُلُوبُهُمْ وَأَكْفَرُهُمْ فَتَقُونَ

"How can it be while if they overcome you, will they honour any pact or obligation with you?; they please you with their mouths while their hearts refuse to and most of them are transgressors."

In other āyahs the Muslims are reminded that their only guardian, helper, friend protector, support and refuge is Allah, and if the stretch their friendly hands towards the non-

Muslims, they will be showing a fault in belief which never accords with the belief in the Islamic monotheism.

وَاللَّهُ أَعْلَمُ بِأَعْدَائِكُمْ وَكَفَى بِاللَّهِ وَلِيًّا وَكَفَى بِاللَّهِ نَصِيرًا

"And Allah knows your enemies better and Allah suffices as a guardian, and Allah suffices as a supporter". (sūratun-Nisā' / 45)

وَمَا أَنْتُمْ بِمُعْجِزِينَ فِي الْأَرْضِ وَمَا لَكُمْ مِنْ دُونِ اللَّهِ مِنْ وَلِيٍّ وَلَا نَصِيرٍ

"And you have no Guardian or supporter besides Allah." (sūratush-Shūra / 31)

إِنَّ أَوْلَى النَّاسِ بِإِبْرَاهِيمَ لَلَّذِينَ اتَّبَعُوهُ وَهَذَا النَّبِيُّ وَالَّذِينَ آمَنُوا وَاللَّهُ وَلِيُّ الْمُؤْمِنِينَ

"And God is the Guardian of the believers." (sūratul Ali'Imrān / 68)

وَلَا تَرْكَبُوا إِلَى الَّذِينَ ظَلَمُوا
فَتَسْكُمُ النَّارُ وَمَالَكُمْ مِنْ دُونِ اللَّهِ مِنْ أَوْلِيَاءَ ثُمَّ لَا تُنصَرُونَ

"And do not lean on those who do wrong, lest the Fire should touch you, and you have no Guardian besides Allah, then you shall not be supported." (sūratul Hud / 113)

أَفَحَسِبَ الَّذِينَ كَفَرُوا أَنْ يَسْخِطُوا عِبَادِي مِنْ دُونِي أَوْلِيَاءَ إِنَّا أَعْتَدْنَا جَهَنَّمَ لِلْكَافِرِينَ نُزُلًا

"What do then those who disbelieve think that they can take My servants to be guardians besides Me? Surely We have prepared Hell as a lodging for the disbelievers."

(sūratul Kahf / 102)

In the following *āyah* the Qur'ān considers Allah and His Messenger and his successors and honest believers who are leaders of the Muslims as the true friends and helpers of the Muslims:

إِنَّمَا وَلِيُّكُمُ اللَّهُ وَرَسُولُهُ وَالَّذِينَ آمَنُوا الَّذِينَ
يُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَهُمْ رَاكِعُونَ

"Only Allah is your Guardian and His Messenger and those who believe, those who keep up the *ṣalāt* and pay the *zakāt* while bowing." (*sūratul Mā'idah / 55*)

In another *āyah* it considers real friends and guardians those Muslim men and women who support one another:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ
أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ

"And as for the believing men and women, they are guardians of each other; they bid the good and forbid the bad." (*Sūratul - Tawbah / 71*)

In another *āyah* it regards those Muslims who have taken part in the holy war and helped emigrants and sheltered them as real friends and guardians:

إِنَّ الَّذِينَ آمَنُوا وَهَاجَرُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي سَبِيلِ
اللَّهِ وَالَّذِينَ آوَوْا وَنَصَرُوا أُولَئِكَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ

"Surely those who believed and migrated and warred in Allah's way with their property and their souls, and those who gave shelter and helped, these are friends of each other."

(*sūratul Anfāl* / 72)

The Qur'ān as seen in the previous *āyah* for the preservation of the Muslims' independence, personality, prestige, leadership, devotion, unity and solidarity in order to prevent some weak and flexible Muslims from turning to self-surrender, self-losing, reliance and acceptance of the leadership of non-Muslim groups, and lastly, to preserve the spirit of monotheism and Islamic brotherhood says:

لَا يَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ
وَلَوْ كَانُوا آبَاءَهُمْ خَلِيلِينَ فِيهَا رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ

"You will not find any people who believe in Allah and the Last Day showing affection for the one who acted in opposition to Allah and His Messenger, even though they were their own fathers, their sons, their brothers or their kinsfolk; these are they into whose hearts He has inscribed faith, and supported them with a spirit from Him." (sūratul Mujādilah / 22)

يَأْتِيهَا الَّذِينَ ءَامَنُوا لَاتَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ
أَوْلِيَاءُ بَعْضٍ وَمَنْ يَتَوَلَّهُمْ مِنْكُمْ فَإِنَّهُ مِنْهُمْ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ

"O you who believe, do not take the Jews and the Christians as guardians; they are guardians of each other; and whoever amongst you makes friends with them is of them. Allah does not guide the wrongdoing people." (sūratul Mā'idah / 51)

يَأْتِيهَا الَّذِينَ ءَامَنُوا لَاتَتَّخِذُوا الَّذِينَ اتَّخَذُوا إِدْبَارَ بُرُوجِهِمْ أَوْلِيَاءَ مِنْ الَّذِينَ كَفَرُوا
الَّذِينَ كَفَرُوا مِنْ قَبْلِكُمْ وَالْكَافِرُ أَوْلِيَاءُ وَاتَّقُوا اللَّهَ إِنَّكُمْ مَرْغُوبِينَ

"O you who believe, do not take for guardians those who

take your religion for a mockery and a joke, from among those who were given the Book before you and the disbelievers, and fear Allah if you are believers." (sūratul Ma'idah / 57)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا آبَاءَكُمْ وَإِخْوَانَكُمْ أَوْلِيَاءَ إِنِ اسْتَحَبُّوا
الْكُفْرَ عَلَى الْإِيمَانِ وَمَنْ يَتَّخِذْهُمْ فَآوِلِيَهُمْ هُمْ الظَّالِمُونَ

"O you who believe do not take your fathers and your brothers for guardians if they prefer disbelief to belief, and whoever of you take them for guardians, are wrongdoers." (sūratul-Tawbah / 23)

الَّذِينَ يَتَّخِذُونَ الْكَافِرِينَ أَوْلِيَاءَ مِن دُونِ الْمُؤْمِنِينَ أَيْنَنُفُونَ
عِنْدَهُمُ الْعِزَّةَ فَإِنَّ الْعِزَّةَ لِلَّهِ جَمِيعًا

"Those who take the disbelievers for guardians instead of the believers. Do they seek dignity through them? Then surely full dignity belong to Allah." (sūratun-Nisā' / 139)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْكَافِرِينَ أَوْلِيَاءَ مِن دُونِ الْمُؤْمِنِينَ أُرِيدُونَ
أَنْ يَجْعَلُوا اللَّهَ عَدِيْبَكُمْ سُلْطٰنًا مِّبْيٰنًا

"O you who believe do not take the disbelievers as guardians instead of the believers. Do you want to give Allah a clear authority against you." (Ibid. / 144)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا قَوْمًا عَضِبَ اللَّهُ عَلَيْهِمْ
قَدْ يَيْسُ أُولَئِكَ الْآخِرَةُ كَمَا يَيْسُ الْكٰفِرِينَ مِنَ الْكٰفِرِينَ مِمَّنْ أَحْصٰى الْقُبُورَ

"O You who believe do not befriend a people with whom Allah is angry; indeed they despair of the Hereafter just as the disbelievers despair of the people of the graves. (sūratul Mumtaḥanah / 13)

An Ignominious Slander

Some purposeful writers and so-called nationalists who have considered their forefathers' conversion to Islam as contrary to the spirit of nationality and race, make the following judgement in their study of the expansion of Islam among various groups and nations of different religions especially with regards to the Jews and the Christians:

"Islam has based Muslims' relations with the followers of other religions on the expression of enmity, hatred and insult, and has strictly forbidden making friends with them."

The evidences they offer for this ignominious accusation and judgement are the *āyah* which we have quoted concerning the friendship with disbelievers and *ahlul kitāb*.¹

Such sophistry and distortion are shocking! They have wholly ignored the tribute agreement which was fully discussed in the previous chapters and the acceptance of great responsibilities by the Muslims in return for trifling obligations on the part of the committed allies and all those rights and privileges enjoyed by the tributaries. They have relied on a few *āyahs* which they have misinterpreted, whereas these *āyahs* give no indication at all of insult, enmity and hatred towards *ahlul kitāb*.

We have already discussed in detail the manner of good relationships between the Muslims and *ahlul kitāb* the endeavour of Islam to establish good conditions of co-existence, peace and friendship in the social relations of the two allied groups, the way adopted by the holy Prophet of Islam and the religious leaders towards the tributaries, and the latter's insults and hostilities towards the Muslims. What

¹ *Fanaticism and Indulgence Between Christianity and Islam*, pp. 36-8.

we wish to say here is the unchivalrous misinterpretation of the said *ayahs*.

These *ayahs* never prohibit friendly conduct and sincere kindness towards the tributaries who are Muslims' allies. They only give a warning against the acceptance of self-surrender and subordination of the Muslims to others.

The words *wali*, *tawalli awliya'* which are used in the Qur'an in connection with idolatry, too,¹ as well as the word *wali* used in the *ayah* about the succession of the Imam Ali² as a caliph and leader of the Muslims, show clearly that the said words do not have the sense of a simple friendship, since they cannot mean the friendship of idols with a person who is a leader of the Muslims.

Rāghib says in his "*Mafradāt*": "The words *al-walā* and *at-tawālī* are used in cases where two or more things are so welded together that nothing comes between them, and these words are metaphorically employed to show proximity of place, relationship, religion, friendship, assistance and belief."³

Therefore when this proximity is related to support and assistance, it means a helper. If it is used in the sense of an ardour and affectionate association, it means 'beloved' whose demands one cannot resist; and has but to obey him. This is the kind of *walā'* and affection about which it is said:

«من أحب قوما فهو منهم»
«المرء مع من أحب»

¹ The sūrahs ar-Ra'd/16, Zumar/3, Jathiyah/10.

² Sūratul Mā'idah/55.

³ Quoted from *Tafsīrul Mizan*, Vol. 5, pp. 402-8.

"Whoever loves a people he is of them".

"A man is (counted) with those whom he loves."

The type of friendship which is forbidden in the said *āyah* is of the last kind, namely affection which produces spiritual attraction, depriving one of one's and moral impression, and causing subordination to foreigners or seeking their help and leadership. Obviously such a friendship by the Muslims would involve the loss of independence and leadership in favour of others, transformation of the Islamic morals and ways, and inclination towards those of the non-Muslims, and ultimate perversion.

8- Minorities' Freedom in Social Activities

There is no doubt that co-operation is one of the main pillars of the formation of society and its advance towards order and evolution. The more efforts shown by the individuals and the groups, which form the society, in their co-operation and development of co-operative spirit, the greater the measure of power and social discipline of that society, and the greater its speed to evolution.

Though the committed religious minorities may have goals, ideals and beliefs which are different from those of the Islamic society, yet since they have undertaken the responsibility of forming a united society and a joint life in the Islamic realm, they become in fact members of this society, and both sides agree to the principles of common life.¹

Accordingly, the Muslims in their social life will be faced with a wider environment and greater relationships which are the result of the participation of the committed minorities in the formation of this larger united Islamic society. With the

¹ The principle of a common-life contract is the context of the attribute agreement, which may not be violated, except exceptionally.

extension of this society and its relationship, the social organisations of the Muslims find a greater scope, covering the whole of the great united Islamic society.

We can, therefore, say that the need for the expansion of co-operation and its spirit is the inevitable and natural result of the joint tribute agreement.

The matter which must be considered here is: What method and what goals should be adopted for co-operation? We must return once more to the study of the role of the co-operation in the establishment and evolution of the society in order to answer the said question. Without a doubt, co-operation in a society, no matter in what course and for what purpose, will result in the strengthening and growth of that society towards that goal. If the individuals and the groups which form the society adopt the way of social welfare and honorable living at a high human level and make use of co-operation for that objective, the progress and evolution of that society will naturally be towards that goal. But if the individuals join hands for the purpose of gaining profit and cooperate in leading society towards deviation, misery and perversion, this co-operation will result in a downward retrogression, pollution and corruption of the society.

Similarly in a society where the spirit of cooperation is used for a greater gratification of material desires and physical pleasures, and the individual and social forces are employed to attaining this objective, such a society will develop and grow towards that very goal only. But if an organised mass create a society where alongside legitimate material enjoyments and goals they adopt genuine spiritual and ideological objectives to satisfy the moral needs of man, establish

a harmony between these two goals similar to the harmony that exists between body and spirit, and benefit from co-operation in attaining these goals, they will achieve true perfection and human growth at high level, fitting the lofty position of humanity.

Islam has offered the plan of such a society to the humanity as a whole on a larger realistic and more humane scale in accord with the authentic goals of such a society, it has developed the principle of co-operation in two phases of harmony, namely material and spiritual life, thus giving this vital necessity a greater human worth.

The Qur'ān's logic on the Principle of Co-operation

In spite of the clearness of the indisputable principles and deep-rooted social traditions, and even of what is related to the creation of the universe, it has been inevitable for human beings to fall into error concerning the interpretation of these principles and traditions. The plentiful differences which have arisen in this connection are the best proof of this error and mental deviation.

Wherever the Qur'ān reminds the thoughtful mankind of these principles and traditions, it concentrates on the ambiguous points which have produced error and differences, and the reason for this is quite obvious. In the matter of co-operation, too, the Qur'ān shows its goal and course and does not attribute a genuine value to it, but considers the evaluation of its goal and course necessary for the evaluation of this natural principle and tradition of society.

Where co-operation is employed in the way of human's

honourable goals and social happiness, it is regarded by the Qur'ān as a public duty. But when it is misused for human corruption and decadence, the Qur'ān strongly rejects and forbids it:

وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَأَتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

"Cooperate with one another in benevolence and taqwā and do not cooperate one another in vice and aggression; and heed Allah; surely Allah is severe in punishment" (sūratul Mā'idah / 2)

Thus it recommends co-operation in benevolence, continence and protection of divine laws and injunctions, propagation of faith and good deeds based on virtue, but forbids it in oppression, aggression, transgression over the rights of others, deprivation of the safety of life, property and honour, and warns of sever punishment in such cases.

In another verse it describes two high objectives of co-operation which are worthy of human society, namely, chastity and righteousness:

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ ءَامَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ

"It is not benevolence to turn your faces towards the East and the West, but benevolence is that one should believe in Allah and the Last Day and the angels and the Book and the prophets." (Sūratul Baqarah / 177)

Thus benevolence is not paying attention to the appear-

ances of religion, such as making much ado about a change of Qibla, but to profound matters mentioned in the *āyah* and such good deeds as being generous with one's wealth, for God's sake, towards kinsfolk orphans, the needy, poor and mendicant, and emancipating slaves, observing the *ṣalāts* paying the *zakat*, being loyal to one's promise and covenants and showing fortitude in unpleasant events, in sickness and other difficulties, and perseverance and forbearance in war. Such people are truthful in their claim of benevolence and faith and are truly cautious and observe *taqwā*.

This is the meaning of authentic human co-operation to which the Qur'an invites and by which it guarantees evolution, growth and real happiness.

Co-operation on a Universal Level

Co-operation in the sense used by the Qur'an as a means of producing goodness and chastity is not confined to Muslims and their society. It is emphasised on a world level by the sacred religion of Islam. It considers it a duty and general responsibility of all human masses disregarding their intellectual, religious, racial and ideological differences. It has strongly advised every human being to co-operate in the expansion of goodness and abstemiousness.

In explaining goodness and continence, the Qur'an addresses the Jews and the Christians who consider those qualities in connection with apparent matters of religion such as direction one faces in praying and not matters related to the depth of faith and real goodness, and thus create differences on that account. In view of this point and the explanation of the Qur'an about the qualities of goodness and righteousness,

we realise the extent of Islamic co-operation at an international level and greater human society.

Therefore, we may summarize the authentic goals of universal co-operation as viewed by Islam into the following general principles:

1. Intellectual co-operation concerning the philosophy of creation of the universe and the discovery of the facts of the world of existence.

2. Co-operation in the solution of the ideological differences and difficulties.

3. General co-operation in the teaching of religious and intellectual facts and educating human beings on this basis.

4. International co-operation concerning charitable purposes and activities.

5. Establishing international organisations for combatting poverty and protecting the needy and the helpless.

6. Co-operation in aiding the homeless and the wayfare.

7. Worldwide struggle against imperialism to liberate the individuals and the nations from servitude and captivity.

8. Co-operation in the proper worship of the Creator and observance of submission before heavenly injunctions.

9. Co-operation in the expansion of the ethical principles and universal commitment of loyalty towards treaties and every legitimate undertaking.

10. International co-operation in the solution of world economic and political difficulties in order to do away with the causes and factors of these problems, unpleasant events, war and bloodshed.

11. World wide co-operation in combatting disease and its causes.

12. Spiritual readiness and fortitude in facing difficulties and hardships, combined with harmony on an international level.

These twelve principles comprise the two qualities of goodness and *taqwā* for whose expansion the Qur'an calls upon the world and the Muslims to co-operate. It says:

وَسَاعُوا عَلَىٰ الْبِرِّ وَالتَّقْوَىٰ

Cooperate with one another in benevolence and taqwā
(Sūratul Mā'idah /2)

تَتَجَرَّأُوا بِالْبِرِّ وَالتَّقْوَىٰ وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ

"And confer about benevolence and taqwā and heed Allah to whom you will be crammed. (Sūratul Mujadilah /9)

These vital principles require being in quest of faith and fine qualities and good deeds, to which the Qur'an has in numerous *āyahs* invited the human society.¹

Obviously co-operation at a world level on the basis of the said principles helps to create international understanding and diminish the differences and bring about a general inclination towards a unity and a co-existence based on a peaceful common life, and promote the expansion of the Islamic ideology and acquaint the people of the world with the logic of Islam. These valuable results are among authentic human principles for the fulfilment of which Islam employs all its forces and potentialities.

¹ Further *āyahs* starting with "Whoever believed and did good deeds" or "O those who believed and did good deeds", are used to refer to.

Minorities' participation in Co-Operative Activities

In the united Islamic society where minorities are formally considered its members, co-operation on the basis of the two general principles of chastity and righteousness related to the above twelve principles, has been viewed as the most important relationship in Islam, so that the Qur'an has dealt more than anything else with the principle of co-operation at the level of Muslim relationships with the committed religious minorities. Consequently, the minorities may participate in social activities on the basis of co-operation according to the said principles and for the sake of extending these principles.

Undoubtedly, the role of the minorities may be considerable in promoting the true goals of the Islamic cooperation and good understanding through these activities. That is the way adopted by Islam in its relations with the minorities to which it attaches great value.

In view of the above explanations, it becomes clear that the minorities play a significant part in social activities. They cooperate with the Muslims in cultural, hygienic, medical fields, in aiding the needy and indigent, in fighting poverty and social problems, or even acting independently in such fruitful tasks.

The reason for the participation of the minorities in these activities of the great united Islamic society is not only because non-Muslim religious groups enjoy a freedom in these fields according to tribute agreements, but rather the fact that from a social viewpoint and responsibility of a joint life in united and voluntary society, it must be regarded as a necessity, in the same way that Islam regards the duty of co-

operation among the Muslims as something essential.

Concerning the bounds of social freedoms and possibilities, it must be said that the minorities are free individually and collectively to engage in any kind of activity based on the above twelve principles, and any other task which may promote the social, moral and economic amelioration of the united Islamic society, and every activity which is not contrary to the interests of Islam and to the articles of the tribute agreements and other existing treaties.

As discussing the minorities' participation in the legal organisation of the Muslims and in the government as well as the political activities is related to the prohibited section of Muslim undertakings, we postpone it to another opportunity and confine ourselves to this brief explanation.

Of course permissible social activities for the committed religious minorities, though described briefly here, actually comprises all types of tasks which can be developed in accordance with varying conditions of time and era.

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Part Two

Committable Responsibilities

At the beginning of the chapter on "Muslims' Responsibilities on the basis of the Tribute Agreement," we divided the commitment of the Islamic society into three distinct parts: the first part of which we discussed adequately under the title "Inevitable Commitment". Now, we will deal with the second part, namely "committable responsibilities," and discuss it from both the qualitative and quantitative viewpoints.

The first point to mention is the limits and measures of the rights, privileges, options and freedoms which we fully discussed in part one. Though these rights and freedoms are considered the necessary conditions of the tribute agreements, which must be observed inevitably by the Muslims, it does not mean that they come under such a verdict with all their details and minor points and in the wide sense described before so as to make it binding on the Islamic society.

We explained in those discussions that the limits and measures of the above rights and freedoms, both quantitatively and qualitatively, are predictable in the tribute agreement, and Muslims may take into consideration in the text of

the joint treaty their limitation or extension. Therefore the rights and freedoms discussed in part one which were related to inevitable commitments, will also be related to part two of the commitment with regards to their Peculiarities, limits and manners.

Obviously, the tribute agreement cannot be obscure on general and inexplicit in this connection, and all its peculiarities and limitations must be fully stipulated in the text of the agreement. This is exactly what the Imam Ali advised in his famous charter to Mālik al-Ashtar, saying:

«ولا تعقد عقدا تجوز فيه العلل
ولا تعولن على لحن قول بعد التأكيد والتوثقه»

"Do not conclude a treaty in which diverse interpretations and pretext find their way, and do not rely on the interpretation of vague words after its conclusion and confirmation."¹

Therefore, conditions should be stipulated in the tribute agreement concerning security, religious freedom, choice of residence, independence of judgment, right of appeal to the Islamic courts, expansion of commercial and economic relations, civic rights of the minorities, social relations and greater social activities for them, all of which are binding on the Muslims, too.

For example, in the question of the minorities' right of immunity, under conditions necessitated by the Muslim and

¹ *Nahjul Balaghah*, letter No. 53.

the Islamic interests, the Muslim society undertakes that the government should always or at the request of the committed groups, place agents to protect their life, property or family, even though there may exist to danger, and the step is taken as a precaution. As the said responsibility applies also to cases where no danger exists, if it is not stipulated in the text of the agreement, the Muslims will have no such obligation towards them.

Similarly in the matter of religious freedom related to the freedom of churches and performance of religious ceremonies, the Islamic government may accept further obligations, or abstain from stipulating the minorities' limitations in the text of the agreement, since in such a case the minorities will have a greater freedom, and in engaging in the said restrictions, some of which were described before, they will only be rebuked or punished according to the regulations, whereas if they are stipulated in the tribute agreement, it will be violation of the treaty.

In their free choice of residence, too, the Muslims may guarantee the residence of the minorities in their own realms and houses, stipulating details, or permitting them to cross forbidden zones (such as the land of Hijāz), or owing to certain exigencies provide facilities or extraordinary privileges for the settlement of the minorities.

Similarly in judicial matters, the Islamic government may guarantee the minorities' right of appeal to the Islamic courts, even though such courts are fundamentally free to refuse the minorities' appeals.

In the expansion of the economic and commercial relations, in so far as no damage is done to the Muslims' high

interest and independence, greater freedom may be granted, and a competent Islamic government may in the agreement undertake to allow the expansion of economic activities of the minorities, purchase of their goods and products, or sale of the commodities needed by them daily or commercially.

Concerning marriage, divorce, inheritance and other civic rights of the minorities, conditions may be inserted in the text of the agreement to provide greater facilities for them or facilities that may be demanded by them, and thus the Muslims guarantee these.

Concerning the conduct of the Muslims and observance of social customs, too, conditions may be agreed upon by, both sides in favour of the minorities, such as the necessity of the Muslims' participation in the minorities' circles' or their non-participation in them, or recognition of certain customs which are in the interest of the minorities and are not damaging to the Muslim interest and prestige, If there are greater possibilities for participation in social activities, the minorities may offer proposals to the Muslims, such as setting up special establishments, agencies, institutes, universities, hospitals, schools, recreation centers of public welfare, scientific, hygienic and economic centres, or impose certain burdens on the Muslim budget. In such cases the Muslims may accept the obligation in so far as the interests of Islam and the Islamic society permit.

Naturally if any of the above obligations do not accord with the matters which will be explained in Part Three, they have no legal validity.

Part Three

Illegal Commitments

The facilities and privileges provided by Islam and the heavy responsibilities undertaken by it in return for the minimum reciprocal obligation of the religious minorities through the conclusion of a treaty of peace and alliance, are unrivalled in international agreements to which the hostile parties rarely agree. In view of the fact that the tribute agreement is concluded under the conditions where the Islamic society enjoys every power and superiority and can impose every kind of terms of the religious minorities, the legal worth of this system of agreement and its role in the establishment of a durable peace which no other positive human law or treat has rivalled so far, we will not have resorted to exaggeration in this connection.

A survey of the political agreements and peace treaties in history between governments and nations in the past and present, will show that such obligations undertaken by the Muslims in the tribute agreements are accepted only by governments which have no alternative but to surrender to a victorious enemy.

In fact it is the law of Islam which for the first time and for the sake of peace has ignored the principle of equality and balance of reciprocal obligations in the treaties. It has not only connived at exploiting international pacts in its own interest, but has preferred the establishment of peace to the preservation of the rights and interests of the Islamic society.

But inspite of all its flexibility and self-sacrifice in the way of peace, it has never neglected the following principle which has been stated in one of the Imam Ali's charters:

"Do not reject any peace which the enemy proposes to you and which is to Allah's satisfaction. But I warn you that after making peace you should beware of the enemy's cunning and treason. The enemy may often approach you in order to take you by surprise. You should always take the initiative in the events and never abandon caution nor be deceived by your imagination or ignore your feeling of suspicion."¹

Moreover, Islam has never ignored the goals and the essential principles on which the universal call of Islam is based, and has with being perfectly realistic and with for-sightedness considered fundamental goals inviolable under all conditions of peace and war.

Thus in a survey of the law of the tribute agreement, we come across cases where Islam considers some of the responsibilities unacceptable and their commitments illegal. In this way the authority of the Islamic society and of its rulers has been limited in committing themselves to certain undertakings which will be explained here under the title of "Illegal commitments."

In general the limitation of the Muslims' commitments in

¹ Ibid.

the tribute agreement and boundary of the Muslim rulers' authority in accepting obligations may be summarised in the following general principles:

1. Commitments which may endanger the Muslims' independence
2. Commitments which may damage the Islamic leadership.
3. Commitments which are contrary to the Islamic laws and general precepts.
4. Acceptance of conditions contrary to the stipulations of the tribute agreement.
5. Commitments contrary to the freedom of the Islamic call.
6. Commitments which may result in the divestment of the territorial sovereignty or violate its integrity.

The above cases are, in fact, the closed boundaries which no Islamic authority can transgress in the conclusion of a tribute agreement, or accept them. A description of these boundaries will also help to clarify the extent of the committable obligations mentioned in Part Two, since these general principles explain both the limitations and the extent of freedom of the Islamic society with respect to obligations.

Now we will discuss the said boundaries and limitations.

1. When Muslims' Independence and Sovereignty are endangered

The term "sovereignty", which was used for the first time by the French jurist, Jean Budin, is employed usually for the free will of governments and their independence in taking decisions without the interference of another power or being subordinate to a similar one.

Some jurists who follow the opinion of absolute sovereignty, believe that a government has a perfect and absolute political independence, and its acts and decisions cannot be limited in any matter or by any power.

As a government has an internal and external political authority its sovereignty, too, gives the monopoly of this political right in both its aspects to the government and a perfect freedom in its relations with the nation and other countries¹ to carry out any decision which it considers advisable without any restriction.

Although some jurists reject the idea of the unlimited sovereignty of governments, and show doubt about its accord

¹ Usually, the term "independence" is used for "external sovereignty, and some legal experts use them as synonyms.

with realities, yet their doubt is due to the fact that they consider it contrary to the formation of international organisation, to their authority and to international law.

Thus the limited sovereignty which is accepted, means that the sovereignty of the governments depends on the rules and decisions of the United Nations Organisation and the international law, for, the social solidarity of nations and exigencies of the international society necessitate the limitation of sovereignty of governments.

Article 14 of the declaration of the rights and the duties of the governments which has been drawn up by the Committee of International Law, stipulates that "every government must act in its relations with other governments according to the International Law and to the observance of this principle that the sovereignty of a government is subordinate to international law."¹

Here the theory of Alvarez, the USA jurist, is quite opposed to the opinion of absolute sovereignty, and according to him, even matters related to national interests should be determined by competent international authorities, such as the Security Council, the General Assembly of the United Nations Organisation, and the International Court of Justice.

Jean Jacques Rousseau, in his *Social Contract*, while defending absolute sovereignty and its indivisibility, says of the source of sovereignty and the power which possesses this political quality, that sovereignty is absolutely a monopoly of the nation.

If we consider the government and its power as something derived from the will and desire of the nation, sovereignty

¹ *General International Rights*, Vol. 2, p. 45.

cannot be regarded as an inherent quality of a government, since its power and will are subordinate to the will and desire of the nations.

This point can be understood more easily in connection with internal sovereignty.

But if we are dealing with the question of sovereignty in relation to other governments and investigating the two views of limited sovereignty and unlimited sovereignty, we must remember that the inevitable necessity of accepting obligations automatically, voluntarily and legally limits the sovereignty of governments. The arguments offered by the supporters of the idea of limited sovereignty as well as the present exigencies of the international society, and the solidarity and conditions which have been created through the membership of governments in International Organisations, make it necessary for the governments to have a limited sovereignty owing to their commitments to other governments and to international organisations.

As commitments have their source in the will and authority of governments, therefore the limitation of sovereignties will not be outside the power and will of the governments and ultimately of nations.

Obviously, a compulsory and non-compulsory limitation of the sovereignty of governments beyond the bounds of the international commitments and treaties, especially in the way stated by Alvarez, and subordinating the recognition of the national competence of government to the decisions and regulations of international organisations which would provide a pretext for the domination of great powers and fulfilment of their purposes and interests, is nothing but a new

type of colonisation, in the same way that absolute sovereignty, too, cannot be imaginable in view of the necessity of accepting obligations.

As we have now become familiar with the meaning of sovereignty on a modern legal basis, we must draw the attention of the reader to a survey of sovereignty from the viewpoint of Islamic law and its logic.

Sovereignty in the Islamic Law

In order not to be remote from legal terminology, we will discuss sovereignty from the viewpoint of the Islamic law on the assumption that sovereignty is a quality of a government and its political power. Therefore, we must first become familiar with the sense and the political nature of a government in the Islamic logic, and then deal with the meaning of sovereignty.

Although the term 'government' is not seen in the texts and sources of the Islamic law¹ yet if we wish to employ it in an Islamic sense and according to Islamic legal criteria, we may call an Islamic government an organised Islamic society with a definite territory and a definite political power.

As the guideline and criterion of the national unity of a population in an Islamic society is the acceptance of the Islamic law and ideology and obedience to divine will and law, and since the meaning of government is nothing but the con-

¹ In legal discussion, there are different definitions given to "government". Taking those definitions into consideration, it may be said that a "state" consists of a group of individuals who are permanently and orderly stationed in a limited realm, obeying an independent power or government. Thus, the elements of which a state consists are: people, realm and political power or a government.

formity of the law of Islam and the expansion of social justice according to divine law and will, the Islamic law and ideology may be considered as the main element in the formation of the Islamic government.

In fact a people who have voluntarily accepted to follow the ideology and the law of Islam, and to carry it out, establish an Islamic government and create the necessary elements for the formation of a legal government.

Moreover, as the perfect execution of the Islamic law is inseparable from the formation of a government and the creation of a political power, therefore an obligation to carry out the law of Islam will automatically supply this element of government, too.

Thus, it becomes clear that the role of the Islamic law and ideology in an Islamic government is not the only role determining the system of government, but there are also other main criteria that form the elements of a government,¹ for in an Islamic government the indicator of nationality, territory, frontier, political power and government is nothing but the Islamic ideology and law.

This point can be explained in another way. Since the acceptance of the ideology and the law of Islam by the people forming the government is based on the perfect freedom of will and choice, and thus the free will of the Muslim nation determines the form of the rule and political power of its own society, the main indicating element in the creation of government is the free will and joint wishes of the individuals who have accepted the rule of the divine law.

¹ For further explanation please refer to *Islam and International Rights*, Chs. 2 and 3.

Thus we may regard the government as derived from the union of will and want of the Islamic society and the will of Allah, or the perishing of the former will in the latter's, since the other two elements, namely the territory and government, are created with the mingling and subordination of these two.

In this way the Islamic concepts of independence and sovereignty, too, become clear. Their indicator, too, is nothing but the law of Islam. In other words, the Islamic government has sovereignty and independence only within the bounds of the Islamic law, and its competence, freedom of will and authority both with regards to the measures taken within the frontiers of Islam and its decisions and acts related to foreign and international relations, are limited to the regulations of the Islamic law. An Islamic government does not possess such a freedom of will as to take every step or every decision, or disregard the established duties.

Clearly this does not mean divesting the individuals and the peoples of their freedom or violating their free will. This is something that is accepted by the free will of the nation itself and is undertaken by it. Therefore, even the limitation of the sovereignty of the Islamic government, too, is derived from the free will of the nation.

Another kind of limitation which restricts the sovereignty of the Islamic government, is the legitimate obligations which it undertakes formally according to the Islamic law in international relations or in relation to other governments, groups or individuals.

The above cases are true if we consider the sovereignty of the Islamic government to be absolute. But if we consider the Islamic government as bound by the law and the legitimate

obligations in its relations to other governments and similar powers, then independence and absolute sovereignty are undoubtedly among the manifest qualities of the Islamic governments. It cannot be influenced by, or dependent on, any power. In other words, the Islamic government has complete freedom and competence in the establishment and the execution of the Islamic law internally and externally, and no non-Muslim individual or government can impose a limitation on the Islamic government or interfere in its affairs.

Principle of Sovereignty According to the Islamic Jurisprudence

The independence and sovereignty of the Islamic society is one of the most fundamental and necessary principles of the Islamic education and politics, whose importance is due to its direct connection with the high interests of Islam which may never be forgone, as to forgo them would produce irreparable damage.

This principle is so important that it overshadows many other injunctions of Islam, and where the independence of the Muslims is endangered, some individual and less-important regulations are disregarded for the sake of its protection and many forbidden acts become allowable. (!)

This type of action and reaction within the enactment of the law takes place on the basis of giving priority to the more important over the less important, in case of the rivalry of the regulations. Consequently in cases where the preservation of independence is not possible with keeping other regulations and injunctions, their influence, even though they may be important in Islam, will be lessened because of the priority of

the principle of independence.

Of course there are rules and injunctions in Islam too which are more important or equally important as the said principle. But our purpose was to show that owing to the importance of independence, the fact that many other Islamic injunctions may be overshadowed by this principle, indicates the care and assiduity of the legislator of Islam concerning this principle.

In jurisprudential discussions we find many cases and examples of this rivalry in which the priority of the principle of independence has been clearly stated. In such cases the jurists, resorting to the phrase: "In case of being anxious about the independence of Islam", have considered it necessary to employ all military potentialities and human forces to fight against such a danger, and have even recommended a change of the rules of *jihād* when defense necessitates it. They have further suggested a negative combat when there are no adequate possibilities for fighting.

Principally, Islam has paid attention to the independence of the Islamic society, namely educational and political, and has emphasised the importance of both. We will now discuss its political aspect.¹

Muslims' Political Independence in the Qur'ān

In order to preserve the independence of the Muslim society, the Qur'ān has strictly prohibited every dependence on

¹ As the question of the independence of the Islamic society, from the educational and ethical aspects has already been discussed in this book, together with the relevant *āyahs*, there will be no need to repeat same.

non-Muslim elements or being obedient to them in so far as it is related to religious and political interests, as shown in the *āyah* 113 of *Suratu Hūd*:

وَلَا تَرْكَبُوا إِلَى الَّذِينَ ظَلَمُوا
فَتَنَسِكُمُ السَّارُّ وَمَالِكُمْ مِنْ دُونِ اللَّهِ مِنْ أَوْلِيَاءَ تُعَدُّ لَا تَنْصُرُونَ

"And do not depend on those who are unjust, lest the Fire should touch you, and you have no guardians besides Allah, then you shall not be supported."

If we recollect that this *āyah* is addressed to the Prophet and his followers, and the matters related to him and his *Ummah* are religious facts and teachings as well as questions of social life, governing and leadership of the Islamic society, the prohibition of dependence, in the above *āyah* means a hearty inclination to rely on the unjust in matters of religion, its facts and life affairs.

Reliance in religious matters takes shape in this way that those religious facts which could be exploited by the unjust would be propagated, whereas those parts the revealing of which might be inconvenient to them, would be connived at. In matters of social life, too, reliance on the unjust would mean permitting them to intervene in the social matters and assume the role of rulers or exerting an influence which would alter the religious and worldly aspects of the Muslim society.¹

Such a reliance would certainly mean divesting the Islamic society of its religious and political independence, followed by foreign interference and influence, and subordination to their will and wish. The prohibition by the Qur'an in this

¹ *Al-Mizan*, Vol. 11, p. 53.

connection clearly shows its fate as accompanied by political deviation, too.

The above *ayah* is a reminder that if the Islamic society is deviated in this way, its deadly flame will affect their society and set it on fire, in which painful case they will have no aid but Allah, and will be deprived of this aid because of having committed such a treason and crime.

Today the countries which submit to the big and powerful governments and lose their own political independence for the sake of keeping a regime, or, under the excuse of benefiting from foreign security, place themselves under the protection of another country's military power, or to secure economic aids, or those imperialistic governments which plunder other nations, and usurp their wealth and rights by employing their military forces and international influence, try to conceal the ugliness of such crimes and treachery under the deceitful mask of international friendship and cooperation, and in this way save themselves from the wrath and vengeance of nations.

It is this seemingly friendly imperialism against which the Qur'an warns the Islamic society and informs the Muslims of its serious consequences:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا لَا تَتَّخِذُوْا عَدُوِّيْ وَعَدُوْكُمْ اَوْلِيَاۗءَ تَلْقَوْنَ
 اِلَيْهِمْ بِالْعَوْدَةِ وَقَدْ كَفَرُوْا بِمَا جَاءَكُمْ مِنَ الْحَقِّ

"O you who believe, do not take my enemy and your enemy as friends, offering them affection, while they disbelieve in what has come to you." (Sūratul Mumtahinah / 1)

إِنْ يَشْفِقُوا بِكُمْ بِكُونِ الْكُفْرِ أَعْدَاءُ وَيَسْطُوا إِلَيْكُمْ أَيْدِيهِمْ وَأَلْسِنَتُهُمْ
بِالسُّوءِ وَوَدُّوا لَوْ تَكْفُرُونَ

If they should encounter you, they would be your enemies and stretch to you their hands and their tongues with evil. They would like to (see) you disbelieve. (Ibid. / 2)

الَّذِينَ يَتَّخِذُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ أَبِئْسَ الْفِتْنَى
عِنْدَهُمُ الْعِزَّةُ فَإِنَّ الْعِزَّةَ لِلَّهِ جَمِيعًا

"Those who take disbelievers as friends other than the believers, do they seek might with them? Might rests entirely with Allah" (Sūratun-Nisā' / 139)

مَا يَوْدُ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَلَا الَّذِينَ
أَنْ يُنَزَّلَ عَلَيْكُمْ مِنْ خَيْرٍ مِنْ رَبِّكُمْ

"Neither those who disbelieve from among ahlul kitāb nor the polytheists, like that good should be sent down on you from your lord." (Sūratul Baqarah / 105)

The point which is worthy of notice in the logic of the Qur'an concerning political independence is that this independence does not only involve foreign non-interference, but also every inclination by the Muslims towards foreigners in the form of reliance on them is forbidden even if the reliance does not lead to foreign intervention. Islam has made it obligatory for the Muslims and the Islamic government to rely on themselves and keep their independence in religious, social, economic, military and political matters, and avoid, in their relations with foreigners and other governments relying on them.

We have already discussed in detail the question of the Muslims' social, economic, military, political and interna-

tional relations with the foreigners, and the wide possibilities the Muslims have in this field. But all these cases are possible only if these relations do not take the form of reliance on them which would be contrary to the Muslims' independence, but to be based on freedom, equality and independence.

Another point worthy of notice is that Islam does not only consider keeping independence as a definite duty for the Islamic government and the Islamic society, but it also extends it to cover the individuals, allowing no Muslim to be in his own affairs dependent on the foreigners, and that he and the government should have the same look at the foreigners, as depending on and attachment to, the foreigners, both the governments and the individuals, are forbidden.

According to this vital command, the individuals, the Muslim society and the government must rely on their own powers and possibilities in the solution of difficulties, performance of duties, facing hardships and in their economic, military and political activities, and rely on the organised Islamic society on the basis of co-operation, and strengthen their hearts with the hope of Allah's victory which has been promised to them in the Qur'an:

وَمَا لَكُمْ مِنْ دُونِ اللَّهِ مِنْ وَّالِيٍّ وَلَا نَصِيرٍ

*"Other than Allah you have no guardian and no helper."
(Sūratul Baqarah / 107)*

Agreements Contrary to the Principle of Independence

Treaties and agreements which are somehow contrary to

the principle of sovereignty and violate the independence of the Muslims and the Islamic government have no legal validity from the viewpoint of Islam and no authority has the power to conclude and sign them. This is a point which we could easily gather from the previous discussions.

Clearly, every legitimate agreement, automatically necessitates some limitations of competence, freedom of will and sovereignty of both sides, but such a limitation is not regarded by the Qur'ān contrary to the principle of sovereignty or a violation of independence.

Only those agreements by which the Muslims or the Islamic government must rely on foreigners or give foreigners the right of interference in Muslim affairs, are forbidden and considered invalid.

This is a general Islamic law dominating all international treaties in various fields, some of which we will cite below:

1. Political concessions and privileges granted to foreign individuals or non-Muslim nations through tribute agreements or any other international pact, resulting in the dependence of the Muslims on them, are considered legally null and void.

2. Agreements which result in the dependence of Islamic government on foreign powers and their protection in the management of its internal affairs or foreign policies.

3. Military pacts by which Muslim forces become subordinate to foreign military powers.

4. Commitments by which the Muslim Information Organisations become dependent on foreign espionage activities.

5. Economic dependence and any agreement which hands

over Muslim economy and commerce to foreigners or becomes dependent on them.

6. Cultural dependence and any cultural agreement which subordinates Muslim culture to that of foreigners.

7. Judicial commitments by which the Muslim judicial system becomes dependent on foreigners.

8. Any treaty by which foreigners are allowed to interfere in one of the above aspects related to the interests of the Muslim society in both internal affairs or external policy and relations.

What is meant by interference is that a foreign individual or foreign government exerts influence in the internal and external affairs of the Muslims and duties and competence of the Islamic government in order to compel it to act or abstain from an action.

Principle of Non-Interference

Foreign influence and interference in the sense described above is, from the viewpoint of the Qur'an, intolerable for the Muslim society, and Islam has strictly forbidden it.

On the basis of this general policy, foreign interference even when it does not involve dependence is declared illegitimate, and thus the question of non-interference is considered a general principle in the independent policy of the Islamic government, and the Islamic meaning of sovereignty and independence can thus be spread.

Though the *ayahs* quoted before may seem inadequate for proving this principle, yet the *ayah* 141 of *Suratun-Nisā'* may be quoted as an evidence proving this principle:

"And Allah will never give the disbelievers a way against the believers."

The words "never" is used in this *āyah* to indicate a permanent negation and shows an emphasis denoting the strict command of Islam.

Another interesting point in the above *āyah* is the word "a way" which means "any kind of a way", denoting every type of influence, impression, imposition, compulsion, suggestion and interference. Thus the above *āyah* prohibits every act which may mean the domination of the foreigners over the believers' lives, and every agreement and commitment which may grant such a right to foreigners.

Therefore, the tribute agreements cannot envisage any right for the committed minorities in governmental and judicial appointments or any kind of leadership and directorship which may result in their domination over the life, property, honour and other legitimate rights of the Muslims.

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2. Commitments Contrary to the Principle of Sovereignty

Islam attaches a great importance to the sovereignty of the Muslims and the eminence of the Islamic society, and strictly forbids any kind of foreign sovereignty.

Jurisprudents state this principle in the phrase «الإسلام يعلو ولا يعلى عليه» as a legal rule¹ in various cases of Islamic law, and is quoted as a *ḥadith* in the books of tradition.²

The sense of this legal rule and tradition which speaks of the necessity of the Islamic leadership and eminence, and the abolition of any anti-Islamic leadership, can be gathered from the following *āyah*:

وَلِلَّهِ الْعِزَّةُ وَلِرَسُولِهِ. وَلِلْمُؤْمِنِينَ وَلَٰكِنَّ الْمُنَافِقِينَ لَا يَعْلَمُونَ

"And to Allah belongs the might and to his Messenger and to the believers, but the hypocrites do not know." (*Sūratul*

¹ *Jawāhirul Kalām*, Vol. 21, p. 136.

² *Kanzul 'Ummal*, Vol. 1, p. 17.

Munafiqun / 8)

The reason for the hypocrites' ignorance is that they seek might and leadership by means of the foreigners, and as they have not followed the truth of Islam, they do not understand its leadership and the might of its prophet and the Islamic society, as if they are seeking these among the foreigners and accept the latter's leadership. Thus they carry this heavy load since they are hypocrites and not true Muslims.

The Sovereignty of Islam

Such a sovereignty is not obviously a kind of racism or superiority of a nation, since might, honour and sovereignty do not belong to Muslim individuals and nation, but to the authentic belief and ideology which they are following. It is, therefore, an acquired sovereignty which can be acquired by every individual, group, race and nation of any land. The ultimate goal of Islam is nothing but giving the honour of true sovereignty to all human masses and expand it to the whole world, and not to give superiority to a group, and allow itself, while rising to combat racism and racial discrimination, to create another kind of superstitious attitude by this means.

This fact can be explicitly seen in the said tradition: "Islam surmounts, not surmounted", and in the above *ayah*: "And to Allah belongs the might and to his Messenger and to the believers." This is due to the mission that Allah has granted to the Prophet.

If the acceptance of foreign sovereignty is prohibited, it is because the establishment of foreign sovereignty over the Muslims would mean its domination over their thought and belief, i.e. all Islam. Similarly when it is said that the Mus-

lims and the Islamic government must endeavour for the sake of the honour and the sovereignty of the Islamic society before other societies, governments and non-Muslim groups, it is for the sake of showing the sovereignty and the honour of Islam to the people of the world.

Consequently the Islamic Society must be a model and a witness over the nations. The Qur'ān, addressing the Muslims says:

وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا لِتَكُونُوا
شُهَدَاءَ عَلَى النَّاسِ وَيَكُونَ الرَّسُولُ عَلَيْكُمْ شَهِيدًا

"And thus we have made you a moderate nation that you may be witnesses over the people and that the Messenger may be a witness over you." (Sūratul Baqarah / 143)

Clearly, being a model for, and witness over, other nations is not due to a racial, territorial or blood superiority of the Islamic society, since this society is composed of different races, bloods and territories.

The only criterion that makes the Islamic society and the Muslim *Ummah* a model and a witness is the application of the law and the ideology of Islam in the said society. So long as this society does not have harmony with the legal, economic, political, military, cultural, educational and moral system of Islam, and so long as Islam does not govern all aspects of this society, it cannot assume the proud title of 'Model society' or 'model *Ummah*.' The efforts of the Muslims in an overall obedience to Islam in the above fields are in fact intended to win sovereignty and honour for the Islamic society.

Any damage done to this sovereignty is treason to Islam and to the Muslim society, and no Muslim has the right to commit such a treason.

Though achieving such a sovereignty will willy-nilly result in the sovereignty over other nations, too, yet such a result is natural for every advanced society and powerful righteous nation. The kind of sovereignty we have considered necessary for the Islamic society is the sovereignty equal to the other nations', not over the other nations, even if it ends ultimately in the latter form.

Preservation of sovereignty in International Commitments

Thus the preservation of the Islamic sovereignty is one of the general duties and the Islamic necessities, the violation of which is outside the authority of the Muslims, and international commitments cannot cancel it.

Therefore, the principle of sovereignty must be observed as something constant in all the international treaties which Muslims conclude, sign and ratify. Whatever terms are contrary to the said principle in these agreements will have no legal validity from the viewpoint of Islam.

This law is true, also, of the tribute agreements without any exception, and consequently granting any political, economic, military, judicial and social privileges to the three religious groups of tributaries, which may injure the sovereignty of Islam and the Muslim society, are worthless and invalid.

On this basis a number of jurists have considered it a duty of the tributaries to abstain from constructing build-

ings higher than those of their Muslim neighbours (if these were not built before the conclusion of the agreement), and avoid such acts which may be offensive to Muslims and hurt their sovereignty, such as adultery with Muslim women.

Evidently, a tribute agreement has no competence to grant the religious minorities the right to interfere in matters related to judicial and political professions and whatever may violate the Muslim sovereignty, since such an interference, in addition to violating the principle of sovereignty, produces serious consequences and irreparable dangers for the Islamic society owing to ideological incompatibilities.

The Qur'an gives the following counsel in this connection:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا لَا تَتَّخِذُوْا بَطٰنَةً مِّنْ دُوْنِكُمْ لَا يٰۤاَلُوْنَكُمْ حَبٰلًا
وَدُوًّا مَّاعِنْتُمْ فَذَبَدَّتْ الْبَغْضَاءُ مِنْ اَفْوَاهِهِمْ وَمَا تُخْفِي
صُدُوْرُهُمْ اَكْبَرُ قَدْ بَيَّنَّا لَكُمْ الْاٰيٰتِ اِنْ كُنْتُمْ تَعْقِلُوْنَ

"O you who believe, do not take for intimate friends from among other than your own people; they do not fall short of inflicting loss upon you; they like what distresses you; vehement hatred has already appeared out of their mouths, and what their chests conceal is even greater; indeed, We have made the āyahs clear to you, if you could reason." (Sūratul Āli Imrān / 118)

When befriending non-Muslims produces such unpleasant results, and gives them the chance to do mischief and carry out hostile plots, and feel happy at our pain and suffering, and not abstain from creating uneasiness, and, in spite of their attempt to hide their mental opposition rancour and hatred, unconsciously their tongues to give way to slander and cal-

ummy. Nevertheless, their hearts will remain filled with hatred, enmity, satanic plans and ill-will, what would be the consequence of their sovereignty over the Muslims if they were in charge of governmental, political, military and economic posts?

As the Qur'ān does not advise personal and intimate friendship of the Muslims with the non-Muslims in view of its consequences, and explicitly forbids it, it is undoubtedly more vehement in opposing the entrusting of positions and ranks to non-Muslims which would rob the Muslims of their sovereignty and subordinate the interest and destiny of the Islamic society to non-Muslims.

3. Commitments Contrary to Islamic Decrees

In legal discussions it is customary to consider the subordination of the governments' foreign policy to the internal laws as one of the principles of modern international law, so that the principle of external sovereignty is regarded as something derived from internal sovereignty, and the latter is nothing but the sovereignty of law.

In any case from the viewpoint of the Islamic law, the connection and dependence of foreign policy on the laws and decrees of Islam is something inevitable and inviolable. The necessity of this principle becomes more evident when we see that the ultimate goal of Islam is to expand the Islamic ideology and law in the world.

Obviously every system which is dependent on a particular goal and rules and its objective is summed up in the development of that system and its rules, cannot, for the sake of temporary interests or even for the attainment of its goal, disregard its distinctive qualities and decrees, since such a time-serving policy means the violation of its own goal and principles, or a kind of suicide.

Consequently the commitments of an Islamic society to-

wards its contracting party in international treaties and tribute agreements must not be contrary to the general decrees of Islam and violator of the legal regulations of Islamic society, and any commitment of that type is considered invalid.

What is meant by such commitments are the acts which are undertaken by the Muslims to do or not to do. But, if according to the agreement, the contracting parties are allowed to commit acts which are considered illegitimate by Islam, or allowed to abstain from acts which are regarded as binding by Islam, and the Muslims commit themselves to them (except the cases mentioned in the closed boundaries), the above law is not applicable. For example, if on the demand of the committed religious minorities the Muslims grant them such rights as freedom of buying and selling alcoholic drinks and other commodities the transaction of which is forbidden in Islam, or their consumption is forbidden by the Islamic law whereas they are permitted in the religion of the contracting parties, or their right of non-participation in obligatory Muslim gatherings, and these rights are stipulated in the text of the agreement, such cases are beyond the scope of our discussion.

But if a competent Islamic government undertakes in any international treaty to abstain from executing penal punishment or carrying out judicial laws or performing religious obligations, or guarantees the commitment by Muslims of any acts which are considered a sin and a crime by Islam, or if the Islamic courts issue a verdict contrary to the Islamic judicial law or any other such measures, all of them are without validity from the viewpoint of Islam, and beyond the authority of an Islamic government and come under the law of closed boundaries in the Muslims' international relations.

4. Commitments Contrary to the Law of the Tribute Agreement

The principles and regulations which are valid and binding in the text of the law of a tribute agreement, together with the commitments and conditions stipulated in that agreement are not violable, and no commitments by the Muslim society intended to cancel the said regulations can have a legal worth.

This principle does not apply only to the tribute agreement or other international treaties, but also to all pacts whether, of the economic kind, such as purchase and sale, rent or mortgage or related to civic rights such as marriage and divorce. If any conditions are inserted in the agreement by either or both parties of the contract contrary to the regulations of the said agreement, they will possess no validity. In the Islamic jurisprudence such commitments are investigated under the title of "conditions contrary to the exigencies of concluding a pact", to see whether the invalidity of the said conditions would nullify the agreement itself, or whether only the said conditions lose their binding quality and the agreement itself minus the said conditions would have a legal validity.

What is certain is that conditions contrary to the regulations of all agreements are not binding, and this is true of tribute agreement and other international treaties, too. For example, carrying out the judicial verdicts of Islam in the case of the committed religious groups when one of the parties in the case is a Muslim, and financial obligations of the tributaries are among the inevitable regulations of the tribute agreement.

Accordingly, if the Muslims undertake in a tribute agreement not to carry out the verdicts issued by the judicial Islamic courts, or guarantee the right of referring to the tributaries' special courts (of Jews, Christians or Zoroastrians) even when one of the parties is a Muslim, and attribute no competence to try the said religious groups in the Islamic courts and consider it only within the authority of the courts formed and managed by the minority groups, such undertakings have no validity and are outside the competence of the Islamic government and every other authority, and are null and void.

The modern jurists, too, have considered this case, which is called 'capitulation', a clear example of inequality and violation of the sovereignty of the committed government. Consequently the said antinational and imperialistic system which had been set up after the first world war in some Asiatic and African countries owing to the establishment of imposed governments by force recognized by the international relations, was nullified after the gradual awakening of the nations and people of those countries and the commencement

of independence movements.¹

In the case of the tributary, too, if its non-payment was confirmed by the Muslims in the text of the agreement, the said agreement loses its legal validity. But if certain facilities are envisaged in the agreement as to the sum of the tribute, or after its conclusion on the basis of paying the tribute, some interests and expediencies necessitate its non-payment, the competent Islamic authority can take necessary steps, as, for example, the Prophet of Islam exempted the people of Bahrayn from the payment of tribute.

¹ *The General International Rights*, Vol. 1, p. 31. This imperialistic yoke, on the basis of Turkaman Chai Pact, was imposed on Iran, then, as a result of the pressure of other big powers, the agreement of the capitulation was further imposed on Iran. Later on, this disgraceful brand was removed from the foreheads of the Iranian people, though it was repeated in the contemporary time.

5. *Agreements Contrary to the Islamic Propaganda*

During our previous discussions we have repeatedly referred to the value and importance of the universal mission of Islam as a general duty, and have pointed out the need of free Islamic propagation which is one of the authentic goals of this universal religion and the role of this principle in the philosophy of the Islamic emancipation *jihād*.

What we wish to discuss now is the effect of this on international treaties and tribute agreement. The manner of this effect may be gathered from what was stated about the importance of this principle and its role in legislating the *jihād*, since the said principle requires the drawing up of the international treaties on the basis of free call to Islam, and avoiding any undertaking which may deprive the Islamic society of this legitimate right, or creating of restrictions and obstacles which would be contrary to the goal of the universal mission of Islam.

What is noteworthy here is the legitimacy of the international pacts and the philosophy of their importance in Islam, since Islam, in considering peace as the essential basis of

foreign policy, irrespective of its vital necessity, and its being the genuine ideal and ultimate goal of Islam, regards the establishment of peace by means of the international agreements and the creation of an environment of security and co-existence a proper way by which the Islamic society can engage better in the performance of its duty and mission of universal call to Islam. This is an evident result for a peaceful policy of Islam in the foreign relations of the Islamic society, but it is considered important in Islam.

On the other hand, as the philosophy of the international pacts is the creation of good understanding, closeness and co-existence among nations, any commitment which serves as a barrier in the way of intellectual exchange and familiarity with the Islamic faith and ideology by other nations of the world, is, in itself, a negation of the effect of the treaties and loss of understanding between nations.

Moreover, the contracting parties which oppose the proposal of freedom of the Islamic call and thereby put an obstacle in the way of the promotion of the Islamic faith and attitude, are, in fact, opposed to peace and co-existence and hostile to the Islamic ideology and thought. This would, then, be contrary to the international pacts, and such pacts cannot last long.

Thus, it is clear that Islam cannot allow the Muslims to engage in commitments which are opposed to the universal call of Islam and thereby set up a barrier against the expansion of Islamic ideas and beliefs, or conclude treaties which are based on hostility to Islam and opposition to the beliefs of the Islamic society, and on the spirit of hypocrisy, remoteness and mental opposition rather than on the spirit of peace, co-existence and understanding.

6. Commitments violating Territorial Integrity

The terms 'realm', 'land', or 'territory', which are a basis of the formation of a society and government as used by modern law, are not synonymous with their senses in the Islamic law. Their basic differences which produce different results in many legal questions should not be neglected.¹

The difference between the two, like many other legal terms which assume a special form in Islam and have their root in the Islamic ideology, is that an Islamic realm is a territory the inhabitants of which have accepted the faith and law of Islam and obey the domination of its injunctions.

In other words, the frontiers of an Islamic country and its territorial realm are where the law and faith of Islam exist, and thus with the expansion of this faith, the frontiers of an Islamic land extend automatically, and with the conversion of the people of a region to Islam and obedience to the domination of its law, they automatically join the Islamic society.

Under such conditions the Islamic government, using its

¹ *Islam and International Rights*, Ch. 3.

potentials and being aided by the people of the newly-converted region, defends its independence and the leadership of the newly formed Islamic society, blocking the way of influence and interference of foreign governments. The people of the new realm, too, owing to the faith which they have accepted, cannot accept the rule and leadership of non-Muslims, as the Qur'ān says:

لَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا

"And Allah will by no means give the disbelievers a way against the believers." (Sūratun-Nisā' / 141)

When the people of the newly converted region are not able to defend their independence and leadership or dismiss the aggressive forces, and request other Muslims to help them, it is the duty of all Muslims and the Islamic government to use all their possibilities to aid them unless they have already concluded a non-aggression pact with the non-Muslim disputing group, or another treaty according to which the Muslims are deprived of the right of giving military aid to the disputing Muslims.

The Qur'ān says in this connection:

وَالَّذِينَ آمَنُوا وَلَمْ يهاجِرُوا مَا لَكُمْ مِنْ بَنِيهِمْ مِنْ شَيْءٍ حَتَّى يُهاجِرُوا وَإِنْ اسْتَنْصَرُوكُمْ فِي الدِّينِ فَعَلَيْكُمْ النَّصْرُ إِلَّا عَلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ

"And those who believed and did not migrate, you owe them no guardianship until they migrate and if they seek aid from you in the matter of religion, you have to aid (them),

except against a people between whom and you there is a treaty, and Allah sees what you do." (Sūratul Anfāl / 72)

In cases where the Muslim minority do not possess the necessary power to defend their faith, and other Muslims cannot assist them owing to a joint treaty or military weakness, if they lack freedom of observing their religious duties and rites, they must emigrate to the free Islamic realms.¹

Now after becoming familiar with the Islamic meaning of the Islamic realm and territory, we can see the reason for the necessity of protecting the Islamic lands and defending their territorial integrity, since the transgression over them and violation of their integrity would mean trespassing over the rights of the Muslims, in which case the defense of the realm, if possible, is a general duty of the Islamic society, and as the Qur'ān says:

أَذِنَ لِلَّذِينَ يُقْتَلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ

"Permission (to fight) is given to those who have been wronged; and surely Allah is able to assist them". (Sūratul Hajj / 39)

Therefore the Muslims would never agree to the violation of the territorial integrity of Islamic realms, and any commitment which would involve this violation of their sovereignty and territorial integrity is treason and transgression against the rights of all Muslims and must be condemned and considered invalid.

This principle does not apply to uninhabited lands which belong to the Islamic government or to Muslim individuals,

¹ *Jawāhirul-Kalam*, Vol. 21, p. 270.

since the government and individuals owning these lands may transfer them to a non-Muslim government or individuals. In this case deprivation of ownership does not mean a violation of the territorial integrity we mentioned before. But such a transaction is legal on the condition that it does not damage the independence and leadership of the Muslims and the Muslim government, and does not reinforce the enemies of Islam. In any of the above cases, the transfer of such lands is not legally possible even in international treaties.

Concerning the inhabited lands where Muslims settle (even if these lands belong to Muslim individuals or to the government in which case they may transfer their lands to others), if this transfer involves the expulsion of Muslims or the domination of foreigners over the Muslims, such a transaction cannot have a legal validity whether it is made independently or through international agreements.

Chapter Six

Annulment and violation of the
Tribute Agreement

*Securing the Guarantee of Legal
Enforcement of International Tribute
Agreements*

Non-Fulfilment of the Commitments of the Tribute Agreement

In a discussion in this book we made a brief survey of the violation of the international agreements and their results. But as the abrogation of the commitments of a tribute agreement requires a more elaborate discussion, we devote this chapter to it and will try to avoid repetition.

The necessity of fulfilling one's promise is the first legal result which is derived from the conclusion of a tribute agreement, and this is equally applicable to both contracting parties, without any discrimination. Thus, it is carried out as from the stipulated date, and if no date is stated, it is binding from the moment of concluding it, and both sides must do their best to put it into force.

As the legal duration of a tribute agreement is unlimited, therefore all Muslims, and especially the Muslim governments, are responsible for the execution of the commitments agreed upon by them with the committed religious groups within the realm of Islamic rule for an unlimited period.¹

¹ We have already declared that in this book we discuss only Tribute Agreements which a competent Islamic government concludes with the

In fact the Islamic government undertakes always to see to the fulfilment of the terms of the treaty by both sides. This point will be explained further in a later section.

According to the principle of "the necessity of the fulfilment of a promise", any violation and annulment of a tribute agreement is forbidden for both sides, and is considered an offense and treason. Both "annulment" and "violation" bear certain vestiges which will be dealt with below.

Annulment of the Tribute Agreement

What is meant by the annulment of an agreement is considering it invalid and divesting oneself of the responsibilities in carrying out its terms. This annulment may be made in the three following ways:

1. Its annulment by both sides through a bi-lateral agreement.
2. Unpredicted unilateral annulment.
3. Unilateral annulment which is envisaged in the text of the agreement.

Undoubtedly, the first type of the annulments, can be legally effective, since a tribute agreement, like any other pact which has been concluded with the agreement of both interested parties, can also be considered null and void upon a fresh agreement by both sides.

Bi-lateral annulment has been accepted in Islamic jurisprudence (under the term "*Iqālah*") as an accepted principle, and

religious minorities to dwell within the limits of the Islamic realm. As regards other tribute agreements which are concluded as international pacts with a state following the three official religions, will be discussed in a coming occasion.

it is considered true of the tribute agreement, too. When the Muslims reach an agreement with the committed religious groups for the annulment of the tribute agreement, this agreement loses its validity and is nullified.

The second type of annulment may be regarded from two points of view; unilateral annulment by the Muslims, and unilateral annulment by the committed religious groups. As the tribute agreement, on the part of the Muslims is a binding and permanent pact, it is considered irreversible by the Muslims, that is to say, the Muslims cannot resort to the unilateral annulment.¹ But the committed religious groups may make a unilateral annulment by just departing from the Muslim realm which renders it practically null and void, in the same way that the conversion of tributaries to Islam automatically invalidates the tribute agreements.

¹ Contemporary legal experts usually regard the changing of the situation — which has not been predicted at the conclusion of the agreement — a permission for unilateral annulment of the international agreements, because when there appears a contradiction between a current social and political situation, and the agreement in question, it cannot retain its consistency and firmness since it does not go in harmony with the actualities. Therefore, the state which is harmed by the validity of the said agreement is allowed to annul it from its side. So, the countries which resort to the unilateral annulment of the international agreements, cite the said principle, using it to cover their betrayal and violation of a covenant.

Abu Hanifah, among the Muslim jurists, presented a similar theory, which had been criticized by all other jurists. Abu Hanifah believes that whenever the interests of the Muslims necessitates it, the leader of the Muslims is competent to unilaterally annul the international agreements. (Look up *Alhārul Harb*). As to the Shi'ah jurists, they did not allow, even the next leader, on the pretext that it was concluded by a former leader, to annul or violate it. (*Jawāhirul Kalam*, Vol. 21, p. 313).

Therefore, when a tributary converts to Islam before the payment of the tribute, he is exempted from payment, according to a narration saying: "A Muslim never pays tribute"¹ and according to another narration, "It is not becoming of a Muslim to pay tribute."²

Moreover, according to a rule saying that "Islam severs all its antecedent."³ Actually, Islam negates one's conducts before adopting Islam, including, of course, the payment of the tribute.⁴

As for the third type of annulment (predicted unilateral annulment), this question must first be asked whether the right of abrogation is allowed to be stipulated in the tribute agreement, whether the mention of such a condition on the part of the Muslims or 'by both sides' is not contrary to the exigencies of the tribute agreement, and whether every condition which is incompatible with the exigencies of the treaty must have no validity.

Effects of the Annulment of the Tribute Agreement

Whenever the annulment of the tribute agreement takes place legitimately, the contracting parties are thereby freed from the previous responsibilities and commitments of the tribute agreement. Consequently, the right of residence of the three religious groups (Jews, Christians and Zoroastrians)

¹ *Al-Mustadrak*, Ch. 61 on *al-jihad*, *hadith* No. 34.

² *Al-Bayhaqi's Sunan*, Vol. 9, p. 193.

³ *Kanzul 'Ummal*, Vol. 1, p. 17. *Al-Khṣā'isul Kubrā*, Vol. 1, p. 249. *Al-Mustadrak*, Ch. 15, the instructions for the month of Ramaḍān, *hadith*, No. 2.

⁴ *Jawāhirul Kalām*, Vol. 21, p. 259.

requires a new agreement without which they cannot continue to settle in the Islamic realm and enjoy political immunity, security and observance of their rights there. Thus, if they do not agree to on a new agreement, they must leave the Islamic realm immediately, and the Islamic government has to guide them to a safe land of their choice, and guarantee their safety during this period.

When the annulment is unilateral and illegitimate, it must be considered invalid, and it has no effect on the agreement, and the other committed side cannot annul it on the grounds of its annulment by the other party.¹ This may be made legal by means of a bilateral agreement.

This is possible if the annulment of the treaty does not lead to the actual violation of the agreement, since a violation of one side of the treaty may provide the grounds for its violation by the other side.

Violation of the Tribute Agreement

The violation of the tribute agreement means abstaining from the fulfilment of its commitments or engaging in acts which should be avoided according to the terms of the agreement. This violation of the tribute agreement may be discussed in two forms:

I. Violation by the Muslims:

From the viewpoint of the Islamic law, no Muslim or Is-

¹ This principle is true to all agreement, because the illegal annulment of an agreement would not affect it, and the other party will have to adhere to the agreement. The new International Rights, however, grants both parties the right that, in case of the unilateral annulment, the other party can annul it also on its side.

lamic authority has the right to violate a tribute agreement which has been concluded legally and correctly, and refraining from its observance is considered a great sin and offense. Therefore, no competent Islamic government may take the lead in its violation, and any responsibility in violating it is on this government.

But if these commitments are not fulfilled by the Muslims either voluntarily or forcibly such as being unable to do so, the tributaries, too, may act in the same manner and practically violate the agreement.

In such cases, if they have fulfilled their financial duties (payments), the Islamic government must refund the payments to them.

On this general principle, the alteration of conditions, inadvisability of continuing the agreement, or its harmful consequence for the Islamic society cannot be accepted as a legal grounds for the violation of the agreement by the Muslims, since the agreement does not depend on the expediency of the Islamic society. Therefore, it must be regarded as a permanent international pact, binding for the Muslims.¹

With the exception of Abu Hanifa, all jurists have considered the tribute agreement inviolable, and even in conditions when there is a certain evidence about the danger of its violation by the committed minorities, the Muslims are not advised to violate it.

This view has been quoted in *Āthār-ul-Ḥarb* p. 359, quoting *Al-Badāyī*, vol. 7, p. 109, *Fathul-Ghadir* Vol. 4, p. 352, and *'Al-Badāyī*, vol. 4, p. 108, supported by *al-Muhadhdhab*, vol. 2, p. 263, and *Al-Mughni* Vol. 8, p. 363

¹ *Jawahirul Kalām*, Vol. 21, p. 294.

says follows:

"The reason for the prohibition of violation in the above case is that the tribute agreement assumes the form of an obligation on the proposal of a non-Muslims, and so it is not violable for fear of treason, because a treason by the tributaries is reparable as they are obedient to the Muslim rule. The *āyah* 58 of *sūratul Anfāl* says:

وَأَمَّا اتَّخَافُونَ مِنْ قَوْمٍ خِيَانَةً فَأَنْذِرْ لَهُمُ عَلَىٰ سَوَاءٍ

"And if you fear treachery from a people, confront them on the same terms," is related to the temporary agreement of 'Hudna', and is not applicable to the tribute agreement.

The late author of *al-Jawahir*, after quoting the above *āyah* and stating the necessity of declaring the Hudnā agreement void in case of feeling a definite danger of its violation by non-Muslims, says:

"This does not apply to the tribute agreement since this agreement is the legitimate right of the religious minorities, and the Imam of *Ummah* must welcome such proposal from them, even if he is in the position of power and authority over them. Moreover, the tribute agreement includes financial obligations and is not free of charge. Furthermore the tribute agreement is a permanent one, and in those respects it is not on an equal level with the Hudnā agreement which is temporary. In view of the above explanations we can say that if modern jurists permit the violation of international treaties

in such conditions,¹ without a doubt they will by this means cause a great damage to the continuation of peace, integrity and legal worth of international treaties, and thus they pave the way for traitors and provide an excuse for time-serving opportunists.

2. Violation of the Agreement by the Committed Minorities.

According to the undeniable principle of "the necessity of fulfilment of a promise" which is accepted by all nations and religions as the main basis and guarantee of execution of all agreements, the violation of an agreement by the committed religious groups is an unforgivable offense and treason.

The violation of the tribute agreement by the religious minorities is possible in three cases as viewed by all jurists:

A) Refusal to pay the tribute. The Imam aṣ-Ṣadiq says: "If the men refuse to pay the tribute, they will be regarded as violating the treaty, and therefore they enjoy no immunity of life and property."²

B) Refusal to accept the Islamic judicial verdicts, as described in the chapter on Minorities' commitments.

C) Armed uprising against the Muslims, or collaborating with the enemies of Islam for attacking the Muslims.

In other cases of default and offense by the committed minorities, such as violating the honour or transgressing over Muslim property, espionage for the enemies of the Muslims,

¹ *General International Rights*, by Dr. Safdari, Vol. 1, p. 196. *The Comparative Law*, by Dr. Badrawi, p. 178. *Public International Law*, p. 457.

² *Wasā'ilush-Shi'ah*, Ch. 18, *hadith* No. 1.

sheltering spies, insulting the Holy Prophet of Islam and other Muslim leaders, flagrant affectation towards the forbidden acts in Islam, building new centers of worship and, misleading their own children, if they are stipulated in the text of the agreement the said offense will mean violating the tribute agreement. But if no stipulation is made about avoiding such offenses, committing them does not result in the violation of the agreement, and they will only be liable to the relevant punishments.¹

In some of the above cases, jurists' views differ. For example, Shaykh Tusi considers that the open practise of the forbidden acts by the tributaries, even if this offense is stipulated in the text of the agreement, will not be a violation of the tribute agreement, and it is liable only to penal punishment.

Indirect Violation of the Tribute Agreement

The religious minorities can benefit from the law of the tribute agreement and its privileges when they introduce themselves as the followers of one of the recognised religions (Jewism, Christianity, Zoroastrianism). Consequently if a follower of one of these religions changes his religion to another one of the above religions, such as a Jew becoming a Christian or vice versa, the treaty holds good and remains valid. Shaykh Tusi considers this view right and clear from the Shiite viewpoint.

But if he changes his religion from a recognised one to any religions, other than the said, this will automatically and in-

¹ *Jawāhirul Kalām*, Vol. 21, pp. 267-276.

directly violate the agreement.

If the newly-adopted religion is Islam, he will become on an equal footing with other Muslims in all the individual and social rights and privileges. But if he has turned to another unrecognised religion, he must leave the Muslim realm, otherwise if he is unable to benefit from the law of immunity, he is considered an enemy and will have no immunity.

Consequences of Violating the Tribute Agreement

When the tribute agreement is violated by the committed minorities, it naturally loses its legal validity, and the Muslims will have no obligation and no responsibility towards it. Thus they lose all the rights and privileges they had obtained through the tribute agreement and will be deprived of the right of immunity of life and property. They will also need a new permit for staying in the Islamic realm. Therefore, they will have to renew another tribute agreement with fresh conditions, or leave the Islamic Land.

The only responsibility that the Islamic government has towards such religious minorities is to lead them to their own territory or to a land where they can live in safety, and to protect their rights during this period, since their arrival in the Muslim land had been dependent on an official immunity permit, and now as the agreement has been annulled, their safety must be ensured down to the time of their departure from the Muslim realm, and no treason or deceit should be resorted to against them.

Some jurists have attributed no such right to the violators of the agreement, especially if the violation of the agreement has been due to an armed uprising against the

Muslims, and as they themselves have acted treacherously, they must be regarded as enemies and deprived of immunity of life and property.¹

The late author of *al-Jawahir* has confirmed this extreme view concerning the violators who have broken the tribute agreement by their armed uprising against the Muslims, and has considered the absence of immunity for them as something proper.²

But Shaykh Ṭūsi and the scholar al-Hilli consider it the duty of the Muslim leader to lead the violators to their land. Fakhrul Muhaqqiqin, too, has quoted this view as compatible with those of the jurists.³

As all the conditions which may result in the violation of the tribute agreement are not predictable, therefore what can be said of violation and its effects in general is that the text of the tribute agreement and its stipulated terms and conditions, as well as the view of the competent leader of the Muslims and the verdict of the Islamic courts are always the criteria for distinguishing the question of violation and its punishments.

Accordingly we see that in a particular case the Prophet issued a death sentence against someone who had abused and violated the tribute agreement⁴ and in another case he concurred at the punishment of a Jew who had made an attempt on the life of the Prophet by offering him poisoned meat.⁵

¹ *Jawāhirul Kalam*, Vol. 21, p. 277.

² *Ibid.*

³ *Ibid.*

⁴ *As-Siratul Ḥalabiyyah*, Vol. 3, p. 170.

⁵ *Nahlul Awṭar*, Vol. 8, p. 62, quoting from Ahmad's and Muslim's *Sahih*s.

Some jurists have considered it probable in the first case that avoiding abuse and hostile acts were stipulated in the text of the treaty, and in the second case no such condition was mentioned. Thus, the first case must have been a violation of the tribute agreement, while the second one was not.

But as an attempt on the Prophet's life is a great crime, even though it has not been stipulated in the text of the tribute agreement, it is a clear and manifest example of breaking a promise, so, this interpretation seems weak, showing the role of the Judgement of the Muslim leader and the interests of the Islamic society in distinguishing violation and determining its punishment. Therefore it is clear that Islamic courts and competent judges, in their turn, have an effective role in determining punishments and execution of penal verdicts in the case of guilty tributaries.

Here it must be remembered that though the tribute agreement may be concluded collectively with the religious minorities, yet its consequences affect an individual or individuals who violate it, and it remains binding for other members of the contracting group.

The fact that the violating and treacherous Jews of Banu Qurayzah, Banu-Nadīr, and Banu Qaynuqā' were punished as a group for breaking promise, was because all of them had been engaged in plots and treasonable acts against Islam. But other cases, too, may be found in the Islamic history where violating confederates have been punished individually.

The death of ka'b ibn Al-Ashraf is an example of the individual punishment of the promise-breakers. He was a Jewish confederate of the Prophet who had composed facetious

verses satirizing the Prophet and molesting Muslim women. Eventually he joined some enemies of Islam in armed actions, and was killed at the order of the Prophet, for his treason and violation of the pact.¹

Conversion to Islam after Violating the Pact

We said that by violating the tribute agreement the committed minorities are deprived of their rights and privileges, and they are treated according to the offense which has been committed.

But if in such cases they formally convert to Islam, they will enjoy equal legal and moral rights and privileges with other Muslims, and can settle, like them, in the Islamic realm and benefit by the social advantages.

But benefitting by such a legal right depends on the condition that no verdict has yet been issued about their violation by the Muslim leader and the Islamic courts. If a violating tributary has been condemned to imprisonment, execution or payment of damages, the said punishment will be carried out in his case, and no pardon is permissible.

The above rule of exemption is applicable only if the violating tributary is converted to Islam before the issue of the verdict, and such a conversion must be in good faith in order to negate the verdict.

Nevertheless if his violation is of a kind of offense which,

¹ Al-Bukhari's *Sahih*, Vol. 4, p. 64. *As-Siratul Halabiyyah*, Vol. 3, p. 170.

on the judgement of the Islamic courts and judges, necessitates retaliation or penance or bail, his conversion cannot affect the execution of the verdict.

Clearly the first and third cases are related to the public rights, but private right cannot be disregarded except with the consent of the claimant. As for the second case, all jurists are unanimous about its being a private right which does not prevent the execution of the punishment due to conversion to Islam.

Shaykh Tūsi says in this connection:

"Our companions have narrated that a tributary's conversion to Islam does not nullify his legal punishment".¹ This shows that the related narrations have reached the stage of being renowned or unanimity by the jurists.

¹ *Jawahirul Kalam*, Vol. 21, p. 278.

Precepts Concerning the
Tributaries
(Religious Minorities)

Precepts Concerning the Tributaries *(Religious Minorities)*

Extracts from *Tahrir ul-Wasila* by the
Imam Khomcini¹

The tribute agreement belongs to the Jews, the Christians and those who probably have a heavenly book, namely, the Zoroastrians and the Fire-Worshippers. The various sects of these religions, such as the Catholics, the Protestants etc., have the same standing in the application of these precepts. Their differences of belief, as different sects of the same religion, will have no effect.

Those who consider themselves followers of the prophets with heavenly books, such as Ibrahim (A.S.), will not fall under the precept of the tribute agreement, and similarly, those who have followed the above three creeds after the rise of Islam, are outside the tributaries' condition.

¹ Vol. 2, pp. 497-507.

Every non-Muslim individual or group who follow heavenly books, will be accepted and no testimony is required for this claim.

Women and children are exempt from the payment of the tribute. The needy are allowed a period of grace to make their payment if they can afford it.

If a condition is stipulated in the text of the tribute agreement for women to pay the tribute, it will be null and void, and women's demand to pay tribute will not be accepted.

If after the conclusion of the tribute agreement, the followers of heavenly books refrain from the payment of the tribute, they will be despatched to a safe spot without any molestation or surprise.

There is no fixed amount for the tribute, as its amount is determined by the Islamic government, depending on the conditions and expediencies. The manner of the payment will be decided by the Islamic government with the agreement of both parties.

The tribute is collected annually like the *zakāt*. If no definite date is fixed for payment, it will be collected at the end of the year. But if the tributary is converted to Islam before the end of the year, no tribute will be demanded from him.

The tribute agreement is concluded by the impeccable Imam, and in his absence, by his deputy. A tribute agreement concluded by the unjust rulers may be considered proper. The revenue from the tribute, like other Islamic taxes is used in the interests of Islam and Muslims.

Conditions of the Tribute Agreement

The following conditions must be undertaken in the con-

clusion of a tribute agreement by the followers of heavenly books:

1. Agreement to pay the tribute.

2. Refraining from acts contrary to the immunity and the tribute agreements, such as deciding an armed uprising against the Muslims, and helping the enemies of Islam and the Muslims.

3. Avoiding open practising of the acts forbidden in Islam.

4. Respecting the verdicts of the Islamic courts and accepting them.

5. They must refrain from molesting the Muslims and such acts as adultery with the Muslim women, theft and espionage.

Penal sentences on the tributaries will be carried out according to the Islamic laws, if this is stipulated in the text of the agreement.

Tributaries must not build houses overlooking the neighbouring Muslim buildings, but there is no objection if they purchase such buildings from the Muslims. Similarly if a Muslim builds a house lower than that of his tributary neighbour, no difficulty arises. There is no need for the neighbour's consent in this case.

Non-Muslims are not permitted to enter the Mosque of Mecca, even as tributaries, or to enter other mosques, this rule is also true if the entry of infidels is not for a show of disrespect to the mosques, and the Muslims may not give such a permission to the non-Muslims.

Residing of the tributaries in the Islamic lands is permitted, except in al-Hijāz, but they can pass through it.

The tributaries have no right to change their religion, and if a Jew becomes Christian, or a Zoroastrian becomes an

idolater, he loses his status as a tributary, but if he returns to his original religion he will be accepted.

If the tributaries commit acts which are forbidden in Islam, they will not be molested if they do not do them openly, but in case of practising them openly they will be punished according to the verdicts of the Islamic courts.

Tributaries' testaments will not be carried out by the Muslims if they are contrary to the religious criteria of Islam, but there is no objection to their being fulfilled by the tributaries themselves.

Infidels and the tributaries cannot engage in propaganda in the Islamic realm and lands for purpose of misleading the Muslims, or publish their such publications. It is the duty of the Islamic government to stop their deviating propaganda.

Glossary

- Ahlul Bayt:** The progeny of the Prophet of Islam (S.A.), covering his daughter, Fāṭimah (A.S.) and the 12 Imams of the Shiite.
- 'Allamah:** Well-versed, scholar, knowledgeable.
- A.S.:** Stand for Alayhis-Salām (peace be upon him/her/them.)
- dhimmi:** A non-Muslim (of heavenly Books) (Pl. dhimmis or ahlul-Dhimmah) tributary, who concludes a tribute agreement with the Muslim state.
- dinar:** A gold coin of the Islamic era.
- dirham:** A silver coin of the Islamic era.

- ghusl:** A ritual washing of the whole body.
- ḥadīth:** A narrative ascribed to the Prophet (S.A.) or to *ahlul bayt*.
- ḥalāl:** religiously lawful.
- ḥarām:** religiously unlawful, or prohibited.
- ḥijāb:** A barrier. A women's head-covering
- janābah:** A state of impurity of men and women caused by sexual intercourse, even without ejaculation, or caused by ejaculation in any way. The one in this state is called *junub*.
- jihād:** A holy war, nowadays, defensive.
- jizyah:** Tribute paid by the non-Muslims living in the Islamic realm and the protection of the Islamic government.
- Ka'bah:** A cube-like sacred building in the center of the Great Mosque in Mecca, to which all Muslims have to direct faces when performing the

- ṣalāts*. In this case it is called the *qiblah*.
- Khirāj:** Taxes on the crops.
- Khums:** A 20% tax on one's profits, other than the *zakāt*.
- Kur:** A prescribed quantity of water with which a *mutanajjis* can be religiously purified
- mutanajjis:** Anything which has become religiously impure because of effectively touching a *najāsah*.
- najāsah:** Anything which is regarded by religion intrinsically impure, and it cannot be made religiously pure.
- najis:** Adjective from *najāsah*.
- qiblah:** Re. *Ka'bah*
- ṣalāt:** Obligatory worshipping ritual acts and reciting to be performed five times a day.

- sūrah: A chapter of the Qur'ān, which consists of 114 *sūrahs*.
- ṭahārah: The state of being religiously pure.
- taqwā: Avoiding doing whatever may displease Allah.
- Ummah: The Islamic nations.
- Zakat: Statuary Islamic levy on specified items, to be used for the Muslims' welfare.

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MINORITY RIGHTS

The writer, considering the concepts of the International Law from an Islamic viewpoint, thoroughly deals with the question of religious minorities from two aspects:

He, firstly, tries to bring about a better understanding of minority rights by describing the rights and liberties granted by Islam to them, and then refutes the unjust accusation of the West regarding the religious compulsion.

It is explicitly discussed in this book that the attraction of Islam, and its logical methods of conversion, the negation of imposition of religion, and the spirit of co-existence as well as peacefulness granted is in a way that there has not been so much conflict between the Muslim people and minorities in the Islamic lands.

